

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

REBUTTAL TESTIMONY OF

DARRIN R. IVES

**ON BEHALF OF
GREAT PLAINS ENERGY INCORPORATED
AND
KANSAS CITY POWER & LIGHT COMPANY**

**IN THE MATTER OF THE JOINT APPLICATION OF GREAT PLAINS ENERGY
INCORPORATED, KANSAS CITY POWER & LIGHT COMPANY,
AND WESTAR ENERGY, INC. FOR APPROVAL OF THE ACQUISITION OF
WESTAR ENERGY, INC.
BY GREAT PLAINS ENERGY INCORPORATED**

DOCKET NO. 16-KCPE-593-ACQ

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1 **I. INTRODUCTION**

2 **Q: Please state your name and business address.**

3 A: My name is Darrin R. Ives. My business address is 1200 Main Street, Kansas City,
4 Missouri 64105.

5 **Q: Are you the same Darrin R. Ives that provided Direct Testimony and Supplemental**
6 **Direct Testimony on behalf of Great Plains Energy (“GPE”) and Kansas City Power**
7 **& Light Company (“KCP&L”) in this case?**

8 A: Yes, I am.

9 **Q: What is the purpose of your testimony?**

10 A: The purpose of my testimony is to:

- 11 • Identify and respond to the primary criticisms of GPE’s proposal, noting the
12 actions that have been taken by GPE to address reasonable and valid concerns
13 expressed by parties;
- 14 • Summarize GPE’s compliance with each of the Commission’s Merger Standards,
15 referencing the testimony of other Company witnesses who addressed them in
16 Direct testimony and who will address them in more detail in Rebuttal testimony;
17 and
- 18 • Present a comprehensive set of merger conditions, including significant ring-
19 fencing conditions that collectively ensure that the Transaction will benefit
20 customers and protect them from potential harm due to the financing structure or
21 relationship of Westar and KCP&L with GPE or its affiliates.

22 Additionally, in response to certain Staff and intervenor direct testimony, I discuss GPE’s
23 plans for evaluating generation retirement options through our thorough and robust

1 integrated resource planning (“IRP”) process, which has been utilized by GPE’s
2 operating utilities for many years. I also address intervenor testimony regarding impacts
3 of the Transaction on Federal Energy Regulatory Commission (“FERC”) regulated
4 formula rate filings and wholesale contracts and relationships.

5 **Q: Do Joint Applicants address Staff and intervenor direct testimony on a point by**
6 **point basis in their rebuttal testimony?**

7 A: No. Joint Applicants have attempted to address major areas of concern addressed by
8 parties in their direct testimony in a way that focuses on key rebuttal points offered by
9 Joint Applicants’ witnesses. Not responding to a particular argument made by any party
10 in their direct testimony should not be construed as agreement with that argument. This
11 is the case for my testimony as well as all other rebuttal witnesses for the Joint
12 Applicants.

13 **Q: How is your testimony organized?**

14 A: My Rebuttal Testimony is comprised of five Sections.

- 15 • **Section I** is the Introduction.
- 16 • **Section II** presents an overview or “Executive Summary” of GPE’s merger
17 proposal, inclusive of proposed conditions that I provide in my testimony. I will
18 address my first stated purpose, responding to the major concerns of Staff and
19 intervenors, in this summary.
- 20 • **Section III** reviews each aspect of the Merger Standards, indicating GPE’s
21 compliance in a summary manner, while referring to the relevant GPE witness(es)
22 for a more comprehensive response. I will identify the specific conditions that are
23 relevant to each Merger Standard as part of this section.

- 1 • **Section IV** presents all of GPE’s proposed conditions as a collection, describes
2 the role of each one, and indicates how they work together to benefit and protect
3 the interests of our customers and respond to the valid concerns that have been
4 expressed by Staff and other intervenors.
- 5 • **Section V** describes Joint Applicants’ necessity for 2018 post-closing rate cases
6 in response to intervenors’ suggestion for merger savings riders.
- 7 • **Section VI** responds to concerns regarding sufficiency of analysis regarding
8 generation retirements and potential impacts on the environment and utilization of
9 Kansas resources of such retirements.
- 10 • **Section VII** responds to concerns regarding FERC regulated formula rate filings
11 and wholesale contracts.
- 12 • **Section VIII** summarizes our findings and conclusions.

13 **Q: What is the primary conclusion that the Commission, Staff, and other intervenors**
14 **should take away from your testimony?**

15 A: The Joint Applicants have established that the Commission’s Merger Standards have
16 been met, that the Transaction is in the public interest, and that I have presented a clear
17 and rational path that will allow the Commission to approve the Joint Application while
18 also addressing the reasonable concerns and issues expressed by the other parties in their
19 testimony.

20 **Q: How does your testimony relate to the testimony of other Company witnesses?**

21 A: I will present a complete statement of how GPE’s proposal promotes the public interest,
22 including proposed conditions that serve as “belt and suspenders” for that purpose. I will
23 refer at several points in my testimony to other Joint Applicant witnesses. These

1 witnesses respond to specific testimony of Staff and other intervenors, testify as to
2 compliance with one or more elements of the Merger Standards, and/or provide support
3 for the role served by a GPE merger condition.

4 II. EXECUTIVE SUMMARY

5 **Q: Please provide GPE's perspective of the regulatory review as it stands at this point**
6 **with the filing of GPE's Rebuttal Testimony.**

7 A: GPE announced a merger agreement (the "Transaction") with Westar on May 31, 2016
8 and we subsequently filed jointly for approval of the Transaction on June 28, 2016 (the
9 "Joint Application"). It has been and remains GPE's intention to complete the
10 Transaction as expediently as possible to minimize the uncertainty that a merger presents
11 to all of our stakeholders including the Commission, Staff, customers, shareholders, and
12 the employees of GPE and Westar. As described in the testimonies of Kevin Bryant and
13 Steve Busser, GPE has used the intervening period to take several actions that will allow
14 us to begin delivering the benefits of the merger to our customers as soon as possible.

15 Having reviewed and considered the testimony submitted by Staff and Intervenors
16 on December 16, 2016, we present this set of Rebuttal Testimony to respond to issues
17 that have been raised by the parties. In some cases, we respectfully disagree either with
18 an issue that has been raised or with a specific party's proposal on how to address an
19 issue. However, in many other circumstances, we have heard the concerns and present
20 testimony that focuses on whether the issue is consequential or not, and propose specific
21 conditions to address these concerns. It is our hope and intention that this set of Rebuttal
22 Testimony, with responsive conditions, will resolve all of the outstanding issues to the
23 satisfaction of Staff, Intervenors, and the Commission. To the extent that there are details

1 that remain to be worked out, GPE welcomes the opportunity to meet with Staff and other
2 intervenors at any time to resolve any remaining issues and allow the Transaction to
3 move forward on terms that promote the public interest and the interests of the state of
4 Kansas, customers of both Westar and KCP&L, the Commission and our investors.

5 **Q: Does the GPE proposal, including conditions proposed in this Rebuttal Testimony,**
6 **satisfy the Merger Standards?**

7 A: Yes. I will review each element of the Merger Standards in Section III of my rebuttal
8 testimony. This review will respond to Staff and intervenors as necessary to clarify our
9 proposal and explain why certain elements of their proposals are impractical or otherwise
10 contrary to the public interest. In certain instances, I will present additional merger
11 conditions that address their concerns in a way that allows the merger to go forward
12 while preserving its value for customers, shareholders, and other stakeholders.

13 **Q: Does the Commission require that every Merger Standard result in a positive analysis in**
14 **order to support a finding that the proposed Transaction is in the public interest?**

15 A: No. Although we believe the evidence shows positive benefits under each element of the
16 Standard, the Commission's precedent from previous merger orders does not impose that
17 requirement. Instead, in reviewing a proposed Transaction, the Commission determines
18 if, on balance, the public interest will be served based on a review and consideration of
19 all the criteria as a whole.

20 **Q: Why are merger conditions important?**

21 A: As discussed by Mr. John Reed, merger commitments and conditions are an integral
22 component of virtually every utility merger. They document the applicant's
23 commitments to ensuring that the transaction satisfies the public interest and provide
24 necessary comfort to the Commission and other stakeholders that particular concerns

1 have been addressed. Merger commitments or conditions are often negotiated during
2 settlement discussions. This is certainly still a possibility in this proceeding. However,
3 GPE felt that it was important to propose additional commitments as part of its rebuttal
4 case in response to specific issues raised by Staff and other intervenors to allow the
5 Commission to consider them as part of the record, should the Joint Application be fully
6 litigated.

7 **Q: Do these additional commitments address the concerns of Staff and other**
8 **stakeholders?**

9 A: The proposed merger commitments address the majority of the issues raised by
10 stakeholders, in some cases adopting verbatim a stakeholder's proposal. In Section III of
11 my rebuttal testimony which follows, I will describe each of these and indicate how the
12 proposal addresses them. After doing so, I will briefly identify certain recommendations
13 made by stakeholders that we are not able to adopt either because they are impractical
14 (and often unprecedented) or because acceptance would materially change the
15 Transaction, and as such are something with which we cannot agree. It should be
16 emphasized that our overriding objective is to see this Transaction through and provide
17 meaningful and sustainable benefits to the customers of both KCP&L and Westar, and to
18 the state of Kansas.

19 **Q: What do you consider to be the major concerns that have been raised by Staff and**
20 **other intervenors?**

21 A: There are three principal concerns: (1) that the method of financing by GPE will harm
22 customers of the merged entity and/or limit the ability of the Commission to ensure that
23 customers pay just and reasonable rates, (2) that GPE has agreed to a purchase price that

1 is too high, and (3) a concern that GPE is attempting to collect a portion of the acquisition
2 premium through rates.

3 **Q: How does GPE respond to the first concern, that the method of financing by GPE**
4 **will harm customers of the merged entity and/or limit the ability of the Commission**
5 **ensure that customers pay just and reasonable rates?**

6 A: This concern is addressed in the testimony of Kevin Bryant, Mark Ruelle and Terry
7 Bassham, with support on certain details provided by rebuttal witnesses, Robert Hevert,
8 John Reed, and James Proctor. Although there is evidence that this should not be a
9 concern (*e.g.*, shareholder approvals and credit agency reports), GPE has proposed
10 43 conditions that will effectively “ring-fence” the customers of KCP&L and Westar,
11 protecting them from financial conditions at the GPE holding company level. I will
12 address these conditions in Section IV.

13 **Q: How does GPE respond to the second concern related to the reasonableness of the**
14 **purchase price?**

15 A: Our response to this concern is to revisit the fundamental purpose of this element of the
16 Merger Standard, supported by the testimony of James Proctor, who contributed to
17 development of this factor in 1990 and 1991 while a member of the KCC Staff. As
18 described in detail in his rebuttal testimony, this element is relevant only when the
19 applicants are seeking recovery of at least a portion of the acquisition premium through
20 rates. However, since GPE is not seeking rate recovery of the acquisition premium, the
21 purchase price agreed to by GPE (and approved by its shareholders) as the result of a
22 competitive market auction conducted by Westar does not inform the public interest

1 determination. The only potential relationship, a tenuous one at best, is addressed in the
2 Joint Applicants' response to the first concern.

3 Witnesses Kevin Bryant and Bob Hevert also devote significant portions of their
4 rebuttal testimonies to addressing the reasonableness of the purchase price generally and
5 rebutting contrary positions taken by Staff and intervenor witnesses in their direct
6 testimonies.

7 **Q: How does GPE respond to the third concern alleging GPE is attempting to recover a**
8 **portion of the acquisition premium in rates?**

9 A: As described in the testimony of Mr. Proctor and Mr. Reed, GPE has committed to not
10 recovering any of the acquisition premium through rates, and therefore from Westar and
11 GPE customers. Positions taken by parties to raise this concern are beyond the accepted
12 treatment previously ordered by this Commission and across the country as described by
13 Mr. Proctor and Mr. Reed in detail in their testimonies. Joint Applicants proposal is
14 consistent with Kansas and national precedent.

15 **Q: What concerns or recommendations do the proposed merger commitments not**
16 **address?**

17 A: Staff Witness Hempling offers two recommendations that are unprecedented, impractical,
18 and/or would completely destroy the value of the Transaction. They are effectively
19 mechanisms that would terminate this Transaction and in reality would end any merger in
20 the electric utility industry. These are his proposals that (1) Westar should terminate this
21 merger and conduct a new process with bids based solely on value to customers, and (2)
22 an amount representing a substantial portion of the gain on stock accruing to Westar
23 shareholders should be allocated between customers and shareholders. While it is not

1 clear that either proposal would survive legal challenge, they are addressed from an
2 industry perspective in the testimony of Mr. John Reed. The effect of Commission
3 acceptance of Mr. Hempling's unprecedented positions is addressed specifically by
4 Messrs. Bassham and Ruelle in their rebuttal testimonies.

5 **Q: Do you have any comments on Mr. Hempling's proposals?**

6 A: Yes. As I noted above, GPE is committed to seeing this Transaction through in order to
7 provide the clear and substantial benefits of a merger between Kansas utilities to our
8 customers. We have proposed as part of this rebuttal testimony a set of merger
9 conditions in order to address the valid concerns that have been raised. We are not in a
10 position to address these particular concerns raised by Mr. Hempling because they have a
11 distinct objective to terminate the merger. If we could conceive of a middle ground or a
12 condition that would satisfy Mr. Hempling and permit the Transaction to go forward on
13 equitable terms, we would have considered offering such a condition.

14 **Q: Please summarize GPE's view with respect to its proposal now in front of the**
15 **Commission.**

16 A: The Transaction will create a stronger, regionally-focused and locally controlled energy
17 company that is well-positioned to serve the needs of Kansas and will produce significant
18 benefits for customers for the long-term. These benefits are described in our Direct and
19 Supplemental Direct Testimony (particularly in the testimonies of Mr. Bassham,
20 Mr. Ruelle, Mr. Charles Caisley and Mr. Kemp). They are reiterated in the Rebuttal

1 Testimonies of these same witnesses and in the Rebuttal Testimonies of Tom Flaherty¹
2 and Dr. Arthur Hall², John Reed and myself. They include:

- 3 • Reduction in future rates increases as a result of flowing through 100% of
4 merger savings to customers through the normal rate making process;
- 5 • An electric company that continues to be a local, regional entity with ties to
6 the communities and a major vested interest in the economic well-being of
7 Kansas;
- 8 • A company with a continued physical presence in Topeka and Wichita;
- 9 • Little to no involuntary lay-off of employees;
- 10 • Continued level of good quality of service to all customers;
- 11 • Reduction in economic waste;
- 12 • A positive impact on the environment through an electric provider that has
13 been and will continue to be actively involved in renewable generation and
14 demand-side management(“DSM”)/energy efficiency (“EE”) programs;
- 15 • No impact on the credit ratings of the utility companies; and a parent company
16 that will maintain its investment grade credit rating.

17 We have demonstrated that the merger will provide significant benefits to our customers,
18 make Kansas businesses more competitive and therefore should be recognized by the
19 Commission as meeting its public interest standard. For all of these reasons, the
20 Transaction has received the support of key stakeholders as more fully described by
21 Chuck Caisley and Mr. Bassham in their rebuttal testimonies. As a combination of

¹ Flaherty Rebuttal, generally, summarized at pages 6-9.

² Hall Rebuttal, pp. 16-20, discussing productivity and the positive economic impact on Kansas.

1 Kansas utilities, it preserves the authority of the Commission over both utilities, as
2 distinct from a transaction involving a non-Kansas based utility or financial entity.

3 Further, the GPE proposal satisfies the KCC's Merger Standards and is consistent
4 with other recent mergers approved by the Commission, including ITC Great Plains,
5 Docket No. 16-ITCE-512-ACQ, Order issued October 11, 2016 ("ITC Merger"), and
6 Empire Electric, Docket No. 16-EPDE-410-ACQ, Order issued December 22, 2016
7 ("Empire Merger"), as discussed in the testimonies of James Proctor and John Reed. The
8 merger conditions I propose are reasonable, easy to implement and track, and are
9 balanced to preserve the value of the merger for all stakeholders.

10 Finally, rejection of the Transaction or approval with conditions that destroy the
11 value of the merger to one or more stakeholders would be contrary to the public interest.
12 Our intent is to forge a path forward, working with stakeholders as appropriate, that
13 provides the Commission with the ability to approve the Transaction and create the
14 benefits for customers, our investors, and the state of Kansas.

15 **III. COMPLIANCE WITH THE MERGER STANDARDS**

16 **Q: What is the purpose of this portion of your testimony?**

17 A: I will review each of the Commission's Merger Standards, comprised of eight factors,
18 designated as (a) through (h). For each Merger Standard, I will briefly indicate which
19 Staff or Intervenor witnesses addressed the Standard, and provide a summary statement
20 of GPE's compliance with the Standard, referring to other Joint Applicant witnesses that
21 respond to the relevant Staff or Intervenor testimony in more detail. To make this easier
22 to follow, I have included subheadings that indicate the aspect of the Merger Standard I
23 am addressing. I will conclude this section with an overview of the Company's

1 compliance with the Merger Standards, explaining how the proposal will promote the
2 public interest.

3 **Q: Has the Commission specifically addressed the applicable Merger Standards in this**
4 **docket?**

5 A: Yes. In an Order issued on August 9, 2016, the Commission reaffirmed the Merger
6 Standards adopted in 1991 in the KG&E/KPL merger docket.³ In the 2016 Merger
7 Standards Order, the Commission also stated that any deviation from the standards in a
8 merger application would need to be identified and justified⁴ and that “Similarly, if Staff
9 or an intervenor believes the standards need to be modified in a particular docket, they
10 are obligated to explain the proposed modification and provide the grounds supporting
11 the proposed modification.”⁵

12 **Q: Have Joint Applicants recommended the Commission deviate from these established**
13 **Standards?**

14 A: Joint Applicants have not. Our Application and Testimony address the Merger Standards
15 as confirmed by the Commission in its 2016 Merger Standards Order, presenting
16 evidence consistent with how the Standards have been interpreted and evaluated in past
17 Commission dockets.

18 (1) Merger Standard (a): *the effect of the transaction on consumers.*

19 **Q: Please begin by providing an overview of Merger Standard (a).**

20 A: This Standard addresses “the effect of the transaction on consumers” and includes five
21 subparts, designated as (a)(i) through (a)(v). I will address each of these individually

³ Order on Merger Standards, Docket No. 16-KCPE-593-ACQ, at ¶5 (“2016 Merger Standards Order”).

⁴ *Id.* at ¶7.

⁵ *Id.*

1 although it is useful to comment on these most important elements as a collection before
2 delving into each subpart. In my Direct Testimony, I explained how the Transaction
3 would have a positive effect on KCP&L's and Westar's customers citing the post-
4 Transaction ability of the Company to utilize its solid investment grade financial position
5 to maintain a strong record and commitment of environmental stewardship, and achieve
6 customer cost savings that will flow through to the rates that customers pay thereby
7 benefitting local communities and economies.⁶ These benefits will be delivered while
8 positively impacting the companies' ability to provide sufficient and efficient service.⁷
9 The Company also offered certain regulatory commitments in its Joint Application to
10 ensure protections for all customers from potential negative impacts related to the
11 Transaction.⁸ As noted above, GPE has increased the number and breadth of these
12 commitments to address concerns that have been raised in the Direct Testimony of Staff
13 and other Intervenors.

14 My Direct Testimony on the effect of the Transaction on consumers was
15 reinforced by the Direct Testimony of other Company witnesses including Mr. Busser
16 (addressing the principles for developing its integration plan to achieve efficiencies and
17 savings),⁹ Scott Heidtbrink¹⁰ (operational aspects of the Transaction), Mr. Ruelle
18 (maintenance of safe, effective, and efficient service),¹¹ and Mr. Caisley (commitment to
19 customer service and community involvement).¹²

⁶ Ives Direct, pp. 10-13.

⁷ Ives Direct, pp. 16-17.

⁸ Ives Direct, pp. 22-24.

⁹ Busser Direct, pp. 8-9.

¹⁰ Mr. Heidtbrink's Direct Testimony is being adopted by Mr. Kevin Noblet.

¹¹ Ruelle Direct, pp. 29-30.

¹² Caisley Direct, pp. 7-12.

1 With this overview in mind, I will now turn to the discussion of each of the Merger Standards,
2 beginning with the five subparts of Merger Standard (a).

3 (2) Joint Applicants' Compliance with Merger Standard (a)(i):

4 *The effect of the transaction on consumers, including:*

- 5 (i) *The effect of the proposed transaction on the financial condition of the newly*
6 *created entity as compared to the financial condition of the stand-alone entities if*
7 *the transaction did not occur.*

8 **Q: Did the Joint Applicants address this element in its Direct Testimony?**

9 A: Yes. Mr. Bryant, GPE's Chief Financial Officer, provided the most extensive testimony
10 on the impact of the transaction on GPE's financial condition, including the financial
11 condition of KCP&L and Westar. He explained the steps taken by the Company to
12 ensure it could successfully execute the plan, and how the plan minimized market risk
13 and managed financing risk.¹³

14 Mr. Bassham explained that while some risk is inherent in a transaction of this
15 size and nature, the risks in this case are reasonable and the Company has managed them
16 prudently.¹⁴ In addition, GPE's shareholders have committed to bearing all of the risks
17 associated with the acquisition financing.

18 **Q: Did Staff or other Intervenors present testimony on GPE's financial condition?**

19 A: Yes. Testimony was provided by:

¹³ Bryant Direct, pp. 12-13.

¹⁴ Bassham Direct, p. 16.

- 1 ▪ Staff witness McClanahan argues that the purchase price and size of the
2 acquisition premium, as well as what he characterizes as “financial engineering,”
3 would result in a weakly positioned entity post-transaction.¹⁵
- 4 ▪ Staff witnesses Gatewood and Hempling contend that the Transaction will result
5 in higher financial risk for GPE due primarily to the amount of acquisition related
6 debt being used to finance the Transaction.¹⁶ Staff witness Gatewood also
7 questions certain of the Joint Applicant’s modeling assumptions.¹⁷
- 8 ▪ Several witnesses contend that GPE’s plans to finance the Transaction are
9 problematic due to topics such as to financial engineering, double leverage,
10 capital structure, and allowed and real cost of equity.
- 11 ▪ Witnesses Dismukes, Lesser and Gorman present similar concerns about the
12 financial condition of GPE after the Transaction closes, and each propose various
13 ring-fencing measures to mitigate the financial risk for Kansas customers and the
14 operating utilities.¹⁸

15 **Q: Please summarize Joint Applicants’ response to these testimonies.**

16 A: First, it is important to remember that Merger Standard (a) is concerned with the effect of
17 the Transaction on consumers, and each of its five subcategories (i) through (v) need to
18 be analyzed in that context and within that parameter. With that premise in mind,
19 Mr. Bryant’s Rebuttal Testimony responds to these concerns in detail. Mr. Bryant
20 explains that GPE is in fact using a low cost financing mix to maintain the credit quality
21 of all of its utility operating companies and investment grade ratings at GPE without

¹⁵ McClanahan Direct, pp. 15, 34.

¹⁶ Gatewood Direct, pp. 8-9, 24, Hempling Direct, p. 70.

¹⁷ Gatewood Direct, pp. 23-24.

¹⁸ Gorman Direct, pp. 5-6; Lesser Direct, pp. 113-114; Dismukes Direct, p. 6.

1 requesting to include the acquisition premium or related financing costs in customer
2 rates. Mr. Bryant refutes the arguments by witnesses to the contrary by explaining the
3 simplicity of GPE's financing plans.¹⁹ Mr. Bryant clarifies that debt financing *enables*
4 the Transaction and the significant customer benefits that will flow from it.²⁰ Mr. Bryant
5 also explains how GPE will service this debt and maintain and improve its financial
6 strength after the Transaction closes. As described in Mr. Bryant's Rebuttal Testimony,
7 subsequent to the Joint Applicants' filing of Direct and Supplement Direct Testimony, in
8 late September GPE completed the riskiest component of GPE's financing plan;
9 successfully issuing \$1.6 billion of common stock and \$863 million of mandatory
10 convertible preferred stock to the public markets. Additionally, to manage the interest
11 risk related to the debt involved in the Transaction, GPE entered into \$4.4 billion of
12 interest rate swaps last June.²¹ It is apparent that sophisticated investors in the
13 marketplace do not share the concerns expressed by certain parties in this docket
14 regarding the financial integrity of GPE post-Transaction. Mr. Bryant summarizes that
15 the Commission can have full confidence in the execution of our financing plan,
16 particularly since the most challenging aspects of its execution have already been
17 completed.

18 Finally, the Joint Applicants acknowledge the concerns raised by Staff and
19 intervenors and are proposing to substantially expand their set of proposed conditions in
20 order to address these concerns. I identify these conditions in Section IV of my
21 testimony. Briefly, the conditions include seven categories: General Conditions;

¹⁹ Bryant Rebuttal, pp. 28-32.

²⁰ Bryant Rebuttal, p. 6.

²¹ Bryant Direct, pp. 13-14.

1 Financing and Ring-fencing Conditions; Ratemaking, Accounting and Related
2 Conditions; Affiliate Transactions and Cost Allocation Manual Conditions; Quality of
3 Service Conditions; Access to Records; and Parent Company Conditions. Together,
4 these measures will provide the protection to address concerns related to the financial
5 condition of the utility operating companies post-Transaction and the impact of the
6 Transaction on our service and the communities of which our utility companies are
7 important members.

8 **Q: Do any other Company witnesses address these issues?**

9 A: Yes. Two of our outside experts, Mr. John Reed and Mr. Bob Hevert, address the impact
10 of the transaction on GPE's financial condition. Mr. Reed underscores that debt
11 financing is typical for this type of transaction, and emphasizes that the issuance of debt
12 by the parent is to the benefit of consumers, as risk is borne by shareholders and not
13 consumers.²² As I shall discuss in Section IV, Mr. Reed also addresses the proposals by
14 intervenors regarding ring-fencing, and supports the Joint Applicants' ring-fencing
15 proposals consistent with industry norms.²³

16 Mr. Hevert addresses Mr. Gatewood's contentions regarding financial modeling,
17 including the issue of capital structures for use in ratemaking being determined at the
18 operating company or parent company level. Mr. Hevert notes that, contrary to Staff's
19 position, the long-standing practice among utility commissions is to establish rates based
20 on utility operating company capital structures, not consolidated capital structures.²⁴

²² Reed Rebuttal, pp. 37-38; 88.

²³ Reed Rebuttal, pp. 97-98.

²⁴ Hevert Rebuttal, pp. 4, 7-17.

(3) Joint Applicants' Compliance with Merger Standard (a)(ii):

The effect of the proposed transaction on consumers, including:

(ii) *reasonableness of the purchase price, including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range.*

Q: Did Joint Applicants' address this factor in its Direct Testimony?

A: Yes. Joint Applicants' Direct Testimony described the factors that it relied upon in determining the purchase price, including the validation of the price paid through the Fairness Opinion from Goldman Sachs (for GPE) and Guggenheim (for Westar) and approval by both GPE and Westar shareholders. Messrs. Kemp and Busser addressed in detail the expected merger savings and the integration process developed to ensure those savings will be captured expediently.

Q: Did Staff or other Intervenors present testimony on this element?

A: Yes:

- Mr. Grady recommends the Transaction be denied because there are not operational savings which justify the payment of the AP over book value; and he suggests that the purchase prices is not within a reasonable range in comparison to other recently announced electric utility transactions and based on applying commonly accepted methods of utility valuation.²⁵

²⁵ Grady Direct, p. 13.

- 1 ▪ Mr. McClanahan asserted that price is not reasonable as it could only be deemed
- 2 reasonable if the projected merger savings were equal to or greater than the AP
- 3 associated with the Transaction.²⁶
- 4 ▪ Mr. Hempling asserts that price is not reasonable in light of the savings from the
- 5 merger.²⁷
- 6 ▪ Dr. Kirsch, on behalf of KEPCo, also questions the reasonableness of the
- 7 purchase price and whether there are operational synergies that justify the
- 8 payment of a premium in excess of book value.²⁸

9 **Q: Please summarize Joint Applicants' response to these testimonies.**

10 A: Joint Applicants respond to these testimonies in four respects:

11 First, as noted above, this Merger Standard is to be analyzed within the parameter

12 of how the Transaction affects consumers. As such, it is intended to focus on not just

13 anticipated cost savings, but also on other benefits of the Transaction for consumers.²⁹

14 Second, regarding the arguments that the purchase price could only be deemed

15 reasonable if projected merger savings were equal to or greater than the acquisition

16 premium, Mr. Proctor reviews the KCC merger precedent, including very recent

17 precedent, which demonstrates that the Commission has not historically ruled on the

18 reasonableness of the purchase price in a transaction. To the contrary, the link between

19 acquisition premium and merger savings has only arisen in cases in which the applicants

20 sought to recover a portion of the acquisition premium in rates. In such cases, the

²⁶ McClanahan Direct, p. 13

²⁷ Hempling Direct, pp. 8, 54.

²⁸ Kirsch Direct, p. 5.

²⁹ Docket Nos. 172, 745-U and 174, 155-U, Order issued November 14, 1991 ("1991 Merger Order"); Docket No. 97-WSRE-676-MER, Order issued September 28, 1999 ("1999 Merger Order")

1 Commission has generally limited recovery of the acquisition premium to the level of
2 savings achieved as a result of the merger. Since the Joint Applicants are not seeking
3 such recovery, this application of the Merger Standard (which relates to both Merger
4 Standards (a)(ii) and (a)(iv))³⁰ is not relevant to this case. This argument made by Staff is
5 premised upon an erroneous assumption regarding the Commission's application of the
6 Merger Standard and must be rejected.

7 The Commission's focus should be on the level of savings and other benefits
8 accruing to customers, since no portion of the acquisition premium will be recovered
9 through rates. The Commission's regulatory charge is to ensure that a utility company
10 provides efficient and sufficient service at just and reasonable rates.³¹ Given that
11 shareholders will bear the costs of the acquisition premium in this Transaction, the
12 Commission has not in the past, and similarly in this case, does not need to evaluate the
13 reasonableness of the acquisition premium in light of operational synergies.

14 Third, Mr. Hevert addresses Mr. Grady's argument that the purchase price is not
15 within a reasonable range based on analysis and industry comparisons. Even though this
16 Merger Standard is to be analyzed within the parameter of how the Transaction affects
17 consumers and not as a stand-alone evaluation of the reasonableness of the purchase
18 price, Mr. Hevert point out certain flaws in Mr. Grady's analyses, demonstrating that the
19 analyses performed by the Joint Applicants and their experts show that the purchase price
20 is reasonable – including being within a reasonable range of other industry transactions.

³⁰ Merger Standards (a)(ii) and (a)(iv) (*i.e.*, “whether there are operational synergies that justify a payment of a premium in excess of book value”) are related and may be viewed in concert. As such, I make reference to both elements in this section, and only make summary reference to this issue when I address Merger Standard (a)(iv), below.

³¹ K.S.A. 66-101b.

1 Mr. Bryant discusses the reasonableness of the purchase price as set by the competitive
2 auction professionally run by Westar and its' financial advisor. He also discusses the
3 multitude of financial analyses evaluated by GPE and our financial advisor to determine
4 the appropriate purchase price. Also Mr. Hevert addresses the criticality of not relying on
5 any single analysis as the definitive measure but rather evaluating the totality of the
6 various methodologies before concluding on the reasonableness of the purchase price.

7 Fourth, as noted above in the discussion of Merger Standard (a)(i), Mr. Bryant
8 testifies that GPE's use of corporate debt to finance the Transaction and thereby support
9 the purchase price does not impact the financial condition of GPE, its utility subsidiaries,
10 KCP&L and Westar, or utility customers.

11 (4) Joint Applicants' Compliance with Merger Standard (a)(iii):

12 *The effect of the transaction on consumers, including:*

13 (iii) *Whether ratepayer benefits resulting from the transaction can be quantified.*

14 **Q: Did Joint Applicants' address this element in its Direct Testimony?**

15 A: Yes. Mr. Ruelle testified that the benefit would come from quantifiable efficiencies and
16 cost savings caused by the acquisition.³² Mr. Kemp's testimony identified the anticipated
17 merger savings, established the level of reasonably achievable savings, explained where
18 they will come from and how they will be captured.

19 **Q: Did Staff or other Intervenors present testimony on this element?**

20 A: Yes. Testimony was provided by:

- 21 ■ KCC Staff witnesses McClanahan, Glass, Diggs and Drabinski;

³² Ruelle Direct, pp. 24-27.

1 ▪ Kansas City, Kansas Board of Public Utilities (“BPU”) witnesses Lesser,
2 Krajewski and Steffen; and

3 ▪ Kansas Electric Power Cooperative, Inc. (“KEPCo”) witness Kirsch.

4 **Q: Please summarize Joint Applicants’ response to these testimonies.**

5 A: Mr. Kemp’s Rebuttal Testimony provides a detailed response to Staff and other
6 intervenor witnesses’ criticisms, demonstrating that the quantification of benefits from
7 the Transaction was conducted properly, is consistent with approved industry methods,
8 and fully satisfies Merger Standard (a)(iii).³³

9 Witness Steven Busser demonstrates that the level of confidence of GPE’s
10 management around the sufficiency of savings has grown, due to the more detailed
11 integration planning work performed by GPE and Westar since June 2016.³⁴ Mr. Busser
12 explains that the achievability of the initial estimates of total Transaction savings has
13 been confirmed, and specific plans are being readied for execution.³⁵ Witness Thomas
14 Flaherty confirms the reasonableness of the initial and updated savings estimates, based
15 on both prevailing regulatory practices and review of recent savings estimates in
16 proposed mergers.³⁶

17 (5) Joint Applicants’ Compliance with Merger Standard (a)(iv):

18 *The effect of the transaction on consumers, including:*

³³ Kemp Rebuttal.

³⁴ Busser Rebuttal, pp. 6, 14-15, 22.

³⁵ *Id.*

³⁶ Flaherty Rebuttal, generally.

(iv) *whether there are operational synergies that justify payment of premium in excess of book value.*

Q: Did Joint Applicants' address this element in its Direct Testimony?

A: Yes. Merger Standard (a)(iv) is closely tied to Merger Standards (a)(ii) and to a lesser extent (a)(iii). As has already been explained in detail regarding Merger Standards (a)(ii) and (a)(iii), the Joint Applicants Direct Testimony fully addressed considerations relevant to meeting Merger Standard (a)(iv).³⁷

Q: Did Staff or other Intervenors present testimony on this element?

A: Yes. These witnesses, including Staff witnesses Grady, McClanahan, and Hempling, and intervenor witnesses Andrea Crane (CURB), David Dismukes and Laurence Kirsch (KEPCo), and Krajewski, Lesser and Steffen (BPU), assert that the Transaction should not be approved unless operational synergies/savings are equal to or greater than the acquisition premium. In doing so, they address Merger Standard (a)(iv) together with (a)(ii).

Q: Please summarize Joint Applicants' response to these testimonies.

A: Mr. Proctor extensively addresses both Merger Standard (a)(ii) and (a)(iv) in his Rebuttal Testimony, explaining that these two elements are only relevant to the extent an applicant seeks to recover the acquisition premium in rates. Mr. Proctor cites Commission precedent through numerous prior acquisition orders supporting his position. As the Joint Applicants are not proposing such recovery, this factor is not meaningful in this proceeding.

³⁷ See Bassham Direct, pp. 10-12; Ruelle Direct, pp. 20-21, 39-40; Bryant Direct, pp. 11-12; Bryant Supplemental Direct, pp. 5-7; Heidtbrink Direct, pp. 5, 10; Ives Direct, pp. 18-21; Ives Supplemental Direct, pp. 11-12; Busser Direct, pp. 10-11, 14; and all of the Direct Testimony of Mr. Kemp supporting the operational synergies.

(6) Joint Applicants' Compliance with Merger Standard (a)(v):

The effect of the transaction on consumers, including:

(v) *the effect of the proposed transaction on the existing competition.*

Q: Did Joint Applicants' address this element in its Direct Testimony?

A: Yes. In my Direct Testimony, I explained that the Transaction will not affect the certificated territories of Westar or KCP&L. Further, as Kansas only allows one electric utility company to serve retail customers in each geographical territory in the State,³⁸ the acquisition of Westar by GPE will have no effect on existing competition.

Q: Did Staff or other Intervenors present testimony on this element?

A: Yes. Testimony was provided by:

- Mr. Hempling asserts that that, due to GPE's high acquisition-related debt, the Commission will face pressure to protect GPE from competition by others, including companies that could perform more cost effectively.³⁹
- Ms. Crane stated her agreement with me that there will be no short-term impact on competition from the Transaction, but expressed concern that the elimination of one large player in the field could impact the progress of future technological development and implementation of new power sources, and will eliminate one independent entity that has the potential to examine issues with a different perspective from GPE.⁴⁰

³⁸ See, Retail Electric Supplier's Act, K.S.A. 66-1,170 *et seq.*

³⁹ Direct testimony of KCC Staff witness Scott Hempling, pp. 65-66.

⁴⁰ Crane Direct, p. 51.

- 1 ▪ Other witnesses focused their concerns on the impact of the Transaction on the
2 wholesale power and transmission markets.⁴¹

3 **Q: Please summarize Joint Applicants’ response to these testimonies.**

4 A: As an initial matter, I reiterate that the Joint Applicants reject the contention by Mr.
5 Hempling and others regarding the risk from GPE’s acquisition-related debt to the
6 operating companies and customers from the Transaction. I have addressed this with
7 respect to Merger Standard (a)(i), and it is addressed by Mr. Bryant as well.

8 In terms of Mr. Hempling’s assertion that the Commission will face pressure to
9 protect GPE from competition, I refer to the Rebuttal Testimony of Witness Reed. Mr.
10 Reed demonstrates that the “competition” Mr. Hempling envisions, *i.e.*, having “non-
11 wires alternatives” compete with utility investment as is being contemplated in New York
12 state, is far too speculative at this time to be applicable to this merger standard in
13 Kansas.⁴² As noted by Mr. Reed, it is not yet clear that this new and as-yet untested
14 policy will benefit New York customers. It is certainly not ripe for consideration as part
15 of Kansas’ Merger Standards.

16 Mr. Reed also demonstrates that to accept Mr. Hempling’s premise you must
17 assume regulatory failure - that the Commission somehow cannot or will not exercise its
18 appropriate authority to regulate the utilities. As does Mr. Reed, I disagree with this
19 premise.

⁴¹ Mr. Krajewski (BPU), James Brungardt (Sunflower and Mid-Kansas), Larry Holloway (KPP). Mr. Brungardt (Sunflower/Mid-Kansas), Mr. Doljac (KEPCo), and Mr. Krajewski (BPU).

⁴² Reed Rebuttal, pp. 47-48.

1 **Q: How do you respond to the witnesses who express concerns about the Transactions**
2 **impact on wholesale power and transmission service?**

3 A: These concerns are also speculative and unfounded. I address these witnesses' concerns
4 directly in Section VI in this rebuttal testimony.

5 (7) Joint Applicants' Compliance with Merger Standard (b):

6 *The effect of the transaction on the environment.*

7 **Q: Did Joint Applicants' address this element in its Direct Testimony?**

8 A: Yes. I noted that KCP&L and Westar have both been good environmental stewards and
9 that GPE plans to continue existing programs. I also indicated that the Transaction may
10 enable construction of more wind in the State of Kansas, which could be used to serve
11 Kansas customers and would have a positive impact on the environment.⁴³

12 **Q: Did Staff or other Intervenors present testimony on this element?**

13 A: Yes. Testimony was provided by:

- 14 • Mr. Drabinski (Staff) testified that he did not expect there to be any adverse
15 impact on the environment in Kansas as plants that have been targeted for closure
16 would have occurred without the merger and other existing plants already meet
17 the Clean Air Act standards.
- 18 ▪ Mr. Chang (Sierra Club) expresses concern regarding the impact on the
19 environment and would prefer to see the GPE increase its energy efficiency and
20 wind resources. He recommends that the Commission require GPE to perform
21 integrated resource planning.

⁴³ Ives Direct, p. 11.

- 1 ▪ Ms. Crane indicates the Transaction could have a positive impact on the
2 environment, but expresses reservations about potential stranded investment and
3 the possibility of rate structures that promote energy consumption.⁴⁴

4 **Q: Please summarize Joint Applicants' response to this testimony.**

5 A: As addressed by Mr. Caisley, KCP&L has been a leader in its efforts to promote energy
6 efficiency and renewable resources. Mr. Chang's concerns are not just unfounded, but
7 are actually in direct conflict with actual facts. This is true, as well, for Ms. Crane's
8 concerns regarding rate structures. She uses one example of Westar's inclining block rate
9 design which KCP&L does not have, ignoring other rate design and Demand Side
10 Management/Energy Efficiency efforts and programs deployed by KCP&L but not by
11 Westar.

12 As for Ms. Crane's mention of stranded investment, I have explained below how
13 generation decisions under the integrated resource plan already take such stranded
14 investment into consideration as part of the overall analysis.

⁴⁴ Crane Direct, pp. 51-54.

(8) Joint Applicants' Compliance with Merger Standard (c):

Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area served by the resulting public utility operations in the state. Whether the proposed transaction will likely create labor dislocations that may be particularly harmful to local communities, or the state generally, and whether measures can be taken to mitigate the harm.

Q: Did Joint Applicants address this element in Direct Testimony?

A: Yes. I pointed out in my Direct Testimony that the Transaction will reduce energy costs to Kansas customers from levels otherwise achievable absent the Transaction which will have a positive impact that will flow throughout the State's economy. The combination of Kansas-based utilities will also avoid a loss of jobs to an out-of-state utility.⁴⁵ Mr. Heidtbrink explains in his Direct Testimony (adopted by Mr. Noblet) GPE's commitment to retaining the contact center in Wichita, and Mr. Bassham's Direct Testimony reports several economic commitments that were included in the Agreement.

Q: Did Staff or other Intervenors present testimony on this element?

A: Yes. Testimony was provided by:

- Staff witness Mr. Drabinski expresses concern regarding potential employment impacts of the merger from synergies and/or plant closures.
- Staff witness Dr. Glass also expresses concern regarding the loss of jobs because of the merger.

⁴⁵ Ives Direct, pp. 11-13.

- 1 ▪ Three witnesses representing labor union interests (Rogers, Garretson, and
2 Nordick) seek assurances that the Joint Applicants commitments to labor unions
3 will be fulfilled.

4 **Q: Please summarize Joint Applicant's response to this testimony.**

5 A: The Rebuttal Testimonies of Mr. Ruelle and Mr. Caisley respond to these concerns.
6 Mr. Ruelle describes the significance of Westar's negotiated commitments in this area
7 and the fact that GPE best met Westar's expectations in this area. He also summarizes
8 GPE's performance relative to their commitments since announcement of the Transaction
9 as exceeding his expectations. Mr. Caisley summarizes the reassurances and
10 commitments by GPE in this area. The Rebuttal Testimony of Mr. Arthur Hall filed on
11 behalf of Joint Applicants provides a detailed analysis in response to the allegations made
12 by Dr. Glass regarding the impact of the Transaction on employment and the local
13 economy. Finally, in his Rebuttal Testimony, Mr. Bassham responds to union and
14 employment concerns. He also explains that on Day 1 after the Transaction closes, the
15 executive team of GPE will include six former Westar executives, with five
16 headquartered in Topeka and one in Wichita.

17 (9) Joint Applicants' Compliance with Merger Standard (d):

18 *Whether the proposed transaction will preserve the jurisdiction of the KCC and the*
19 *capacity of the KCC to effectively regulate and audit public utility operations in the state.*

20 **Q: Did Joint Applicants' address this element in its Direct Testimony?**

21 A: Yes. Mr. Ruelle and I addressed this element in our Direct Testimonies, explaining that
22 the Commission's jurisdiction would not be impaired as a result of the Transaction, and

1 would even be enhanced as a result of the convenience and simplicity of dealing with
2 only one company.⁴⁶

3 **Q: Did Staff or other Intervenors present testimony on this element?**

4 A: Yes. Testimony was provided by:

5 ▪ Mr. Hempling and Mr. Gatewood, who assert that the higher leverage at GPE will
6 result in pressure on the Commission to set authorized returns based not on capital
7 market theory and capital costs, but on the need to fund the acquisition financing
8 costs.⁴⁷

9 ▪ Mr. Hempling also makes the argument that the elimination of what he refers to
10 as “benchmark competition” or “across-the-fence rivalry” between GPE and
11 Westar will limit the ability to regulate the merged entity, relative to the current
12 circumstances.

13 **Q: Please summarize Joint Applicants’ response to this testimony.**

14 A: It is uncontroverted that as a subsidiary of GPE, Westar’s (and KCP&L’s) utility
15 operations will continue to be regulated by the Commission. Westar will continue to
16 operate as a jurisdictional public utility in Kansas, pursuant to Westar’s existing
17 Commission-approved Certificate of Public Convenience and Necessity and Kansas law.
18 There will be no changes to the Westar service area as a result of the Transaction.
19 Following completion of the Transaction, all of Westar’s assets utilized for the provision
20 of regulated electric utility service at the time of close will continue to be owned by
21 Westar and these services will continue to be provided by Westar. Westar will continue
22 to utilize its rates, rules, regulations and other tariff provisions currently on file with and

⁴⁶ Ruelle Direct, pp. 32-33; Ives Direct, p. 13.

⁴⁷ Hempling Direct, pp. 62-65.

1 approved by the Commission, and will continue to provide service to its customers under
2 those rates, rules and regulations, and other tariff provisions until such time as they may
3 be modified by the Commission.

4 The concerns of Messrs. Hempling and Gatewood regarding elevated leverage at
5 GPE limiting the KCC are speculative. First, as discussed above, a benefit of the
6 financial structure of the Transaction is that it puts financing risk on shareholders, not on
7 customers or on the operating utilities. Further, multiple witnesses, as well as experts and
8 analyses throughout the transaction process, have shown the risk to GPE from the
9 Transaction's financing is reasonable.⁴⁸

10 Second, these concerns implicitly assume that the Commission's precedent is to
11 use a consolidated capital structure when setting rates at the utility operating companies;
12 Mr. Hevert explains that this is not the Commission's policy, practice, or precedent.
13 Mr. Reed also notes the KCC is not obligated to bail out the financial condition of the
14 parent company or the utility, and has available tools, including ring-fencing, that will
15 address these concerns without shifting any consequences of a weakened utility from
16 shareholders to customers.⁴⁹ He also shows that ring-fencing is how virtually every other
17 state has dealt with this issue. As presented in Section IV of my testimony, GPE has
18 proposed ring-fencing commitments intended to insulate customers from any potential
19 negative impact from the Transaction caused by the higher leverage at the parent
20 company. These proposals are consistent with industry standards for this type of merger.

⁴⁸ Ruelle, pp. 16-17; Reed, pp. 76-79, 87-88; Bryant, generally.

⁴⁹ Reed Rebuttal, p. 54.

1 **Q: Please comment on Mr. Hempling’s testimony regarding the elimination of**
2 **“benchmark competition”.**

3 A: This issue is addressed from a broader, national perspective by Mr. Reed. He testifies
4 that the Transaction has no impact on the authority of the Commission to regulate the
5 operations of Westar or KCP&L, including all matters related to the establishment of
6 rates and terms of service, quality of service, or authority over important resource
7 decisions.⁵⁰ Mr. Reed notes the Transaction would not affect the ability of the KCC to
8 use utility industry benchmarking studies to evaluate Westar or KCP&L, that these
9 studies would include utilities that operate beyond Kansas borders and be more
10 informative, and that a “theoretical value” of maintaining “benchmark competition” is
11 greatly exceeded by the potential value of the merger to customers.⁵¹

12 (10) Joint Applicants’ Compliance with Merger Standard (e):

13 *The effect of the transaction on affected public utility shareholders.*

14 **Q: Did Joint Applicants’ address this element in its Direct Testimony?**

15 A: Yes. Mr. Bassham explained that the companies’ complementary strengths will produce
16 a stronger company than either could achieve alone.⁵² These factors positively impact
17 GPE’s present and future shareholders.

18 Mr. Bryant testified that the Transaction was expected to be neutral to GPE’s
19 forecasted earnings per share in the first full calendar year, increasing to approximately
20 ten percent accretive by 2020.

⁵⁰ Reed Rebuttal, p. 54.

⁵¹ Reed Rebuttal, pp. 55-56.

⁵² Bassham Direct, pp. 3, 10-12.

1 **Q: Did Staff or other Intervenor present testimony on this element?**

2 A: Yes. Several witnesses addressed the impact on shareholders. This testimony focused on
3 the benefits to Westar shareholders given the acquisition premium and the impact on
4 GPE shareholders from the Transaction financing, in particular, any potential harm this
5 could pose to the operating companies and customers.

6 **Q: Please summarize Joint Applicants' response to these testimonies.**

7 A: Many of the arguments made by Staff and other intervenors under this Standard relate to
8 Merger Standards (a)(i)-(a)(iv) and I will not repeat those responses here. In addition,
9 Mr. Bryant addresses arguments by parties related to Merger Standard (e) in his Rebuttal
10 Testimony.⁵³ Mr. Bryant and Mr. Reed emphasize that GPE and Westar shareholders are
11 sophisticated and have relied on sound analysis and recommendations by industry experts
12 in their approval of the Transaction.⁵⁴ Mr. Bassham, Mr. Bryant and Mr. Reed recognize
13 the importance of the fact that shareholders of both GPE and Westar overwhelmingly
14 supported the Transaction.

⁵³ Bryant Rebuttal, pp. 11-32.

⁵⁴ Bryant Rebuttal, pp. 9. 43-44; Reed Rebuttal.

1 Finally, I would note that Merger Standard (e) is somewhat unique because the
2 Commission is not really charged with protecting investors of utility companies and its
3 authority does not extend to protecting shareholders in stock market transactions.⁵⁵ It is
4 reasonable to expect that each Merger Standard will be applied within the context and
5 boundaries of the Commission’s jurisdiction and authority. In requiring that “efficient
6 and sufficient” service be provided at “just and reasonable rates,” the Commission
7 balances the customers’ interest in reasonable rates and good quality service with the
8 shareholders’ right to have a reasonable opportunity to earn a fair return on their
9 investment. We expect that this approach will continue into the future, thus effectively
10 ensuring that shareholders will benefit from balanced regulation and have an opportunity
11 to earn a reasonable return on their investment while continuing to provide efficient and
12 sufficient service.

⁵⁵ This is explained in *In the Matter of the Application of Southwestern Bell Tel. Co.*, 9 K.A.2d 525 (1984), where the court stated, “The legislative grant of authority to the KCC is contained in K.S.A.1983 Supp. 66–101, which provides in relevant part:

“(a) The state corporation commission is given full power, authority and jurisdiction to supervise and control the public utilities ... and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.”

Within that authority lies control over rates and tariffs. See K.S.A. 66-107 [now KSA 66-101b] through –111 [now 66-101e].”

KSA 66-101b requires public utilities to furnish efficient and sufficient service and facilities at just and reasonable rates. KSA 66-101e states the commission may investigate any allegations that a utility is not providing efficient and sufficient service at just and reasonable rates. Thus, the Commission’s statutory charge concerns protecting customers who receive service from the utility company. This is true even where the statutes allow the Commission to intervene in the payment of dividends to shareholders. KSA 66-1214 allows the Commission to prohibit a utility from paying a dividend to shareholders if it will compromise the utility’s ability to provide adequate service at reasonable rates. The focus is on protecting service to ratepayers. Nothing in the Commission’s statutory grant of authority indicates the Commission is charged with protecting investors in their activities in the stock market.

(11) Joint Applicants' Compliance with Merger Standard (f):

Whether the transaction maximizes the use of Kansas energy resources.

Q: Did Joint Applicants' address this element in its Direct Testimony?

A: Yes. I noted that GPE plans to continue to operate Wolf Creek Nuclear Generating Station ("Wolf Creek") and that it may develop new Kansas wind resources as well.⁵⁶

Q: Did Staff or other Intervenors present testimony on this element?

A: Yes. Testimony was provided by:

- Staff witness Mr. Drabinski identifies the reduction in reliance on Kansas resources from plant closures.
- Staff witness Dr. Glass expresses concern that GPE will close generation plants that remain economically efficient, thus reducing the reliance on Kansas resources.
- Sierra Club witness Mr. Chang comments that the failure of Joint Applicants' to make a specific commitment to increase the development of future wind farms and the lack of energy efficiency programs in Kansas demonstrate a failure to maximize Kansas energy resources.

Q: Please summarize Joint Applicant's response to this testimony.

A: As I discuss later in my Rebuttal Testimony, KCP&L has a robust integrated resource planning ("IRP") process that evaluates the Company's generating resource needs going forward. Plant retirements are part of that process and all necessary costs are included. This process will be expanded to include Westar post-Transaction. No plants will be retired without a full vetting through our IRP process. If, in fact, following a

⁵⁶ Ives Direct, p. 13.

1 thorough review, a Kansas generating plant is closed, this would reflect the most efficient
2 use of resources. The Commission's Merger Standards review whether a transaction
3 maximizes the use of Kansas energy resources but certainly does not promote continued
4 use of resources that result in greater cost to Kansas customers.

5 Mr. Caisley also responds to Mr. Chang's assertions noting that KCP&L currently
6 has a request for significantly expanded energy efficiency programs before the
7 Commission in Docket No. 16-KCPE-446-TAR and, if approved by the Commission, and
8 given strong customer demand for such programs, expects to request similar authority to
9 expand those programs into the Westar service territory.

10 (12) Joint Applicants' Compliance with Merger Standard (g):

11 *Whether the transaction will reduce the possibility of economic waste.*

12 **Q: Did Joint Applicants address this element in its Direct Testimony?**

13 A: Yes. As I noted in my Direct Testimony, the achievement of synergies and sharing of
14 best practices will help reduce the possibility of economic waste.⁵⁷

15 **Q: Did Staff or other Intervenors present testimony on this element?**

16 A: Yes. Testimony was provided by:

- 17 ▪ Staff witness Dr. Glass reviews this Merger Standard from the standpoint of
18 whether Kansas energy resources are used efficiently and therefore are not
19 wasted, focusing on whether the premature closing of a power plant would be
20 economically inefficient.⁵⁸

⁵⁷ Ives Direct, p. 14

⁵⁸ Glass Direct, pp. 4, 36 and 40.

- 1 ▪ Staff witness Drabinski recommends a full economic impact study be performed
2 prior to any generating plant closure decision to determine the impact on local
3 communities.⁵⁹

4 **Q: Please summarize Joint Applicants' response to this testimony.**

5 A: Mr. Hall's Rebuttal Testimony presents the view that lower electricity rates, as expected
6 to result from the savings associated with this Transaction, will increase productivity and
7 thereby reduce economic waste. He states, "lower electricity rates help all impacted
8 Kansas businesses increase their productivity and help all impacted Kansas households
9 have greater purchasing power for items other than electricity."⁶⁰

10 Later in my testimony, I discuss how the Company's integrated resource planning
11 process fully evaluates plant closures based on the best long-term interests of our electric
12 customers, not the impact to an individual community.

13 (13) Joint Applicants' Compliance with Merger Standard (h):

14 *What impact, if any, the transaction has on the public safety.*

15 **Q: Did Joint Applicants address this element in its Direct Testimony?**

16 A: Yes. I noted in my Direct Testimony that the sharing of best practices should result in a
17 positive impact on safety for both the public and GPE employees.⁶¹

18 **Q: Did Staff or other Intervenors present testimony on this Standard?**

19 A: Yes. Several witnesses addressed the impact on public safety. This testimony focused on
20 the potential for a negative impact on public safety if vegetation management

⁵⁹ Drabinski Direct, p. 89-90.

⁶⁰ Hall Rebuttal, p 19.

⁶¹ Ives Direct, p. 14.

1 expenditures are reduced⁶² and/or responsiveness to customer inquiries and
2 emergencies.⁶³

3 **Q: Please summarize Joint Applicant's response to this testimony.**

4 A: Mr. Kevin Noblet addresses Staff and intervenor concerns regarding Merger Standard (h)
5 in his Rebuttal Testimony. Both Mr. Krajewski and Mr. Gile note the "potential" for a
6 negative impact on public safety rather than a definitive impact. Mr. Noblet emphasizes
7 that the proposed cost reductions in Westar's vegetation management program do not
8 come from reducing safety precautions, but from efficiencies in how the program is
9 staffed, managed and executed. These efficiencies do not result in fewer trees being
10 trimmed or greater public exposure to tree-related outages or hazards.

11 As for concerns regarding a negative impact on responsiveness to customer
12 inquiries, Mr. Noblet explains that both of the existing call centers will continue to
13 operate post-Transaction with the same emphasis on responsiveness to customer inquiries
14 and the same 7x24x365 staffing for emergency calls.

15 Finally, Joint Applicants are proposing quality of service standards including
16 assessment of penalties, if deemed necessary by the Commission, for failure to meet
17 certain reliability and call center metrics. This proposal adds additional emphasis to
18 GPE's commitment regarding reliability and customer service and the effect a
19 degradation of either may have on public safety.

⁶² Krajewski Direct, pp. 22-23.

⁶³ Gile Direct, p. 14.

1 **Q: What about the assertion by Mr. Gile and CURB witness, Stacy Harden, that the**
2 **Merger Standards require the Transaction to result in higher quality of service**
3 **performance by the Companies than what they were providing prior to the**
4 **acquisition?**

5 **A:** Quality of service metrics are not specifically provided for under the Merger Standards.
6 While this is a fundamental priority of the Joint Applicants and will continue to be so
7 post-Transaction, there is no basis or support for the positions taken by Mr. Gile and
8 Ms. Harden in this regard. Moreover, the Joint Applicants do not understand why Staff
9 believes it is necessary to impose more stringent service standards on KCP&L and
10 Westar than were accepted in a settlement approved by the Commission in late December
11 2016, just a few weeks before the filing of this Rebuttal Testimony. Staff's
12 recommended service quality standards in this proceeding are unprecedented and
13 unwarranted; they are inconsistent with Staff recommendations approved by this
14 Commission previously, including as recently as a few weeks ago. The result of Staff's
15 recommended service quality standards is to unreasonably increase the probability that
16 significant penalties will be incurred. Finally, Staff proposes that the requirements and
17 penalties continue indefinitely rather than terminating after a reasonable showing by the
18 utilities that service levels did not decline as a result of the Transaction as agreed to in
19 both the Empire and Aquila S&As as well as other transactions approved by the
20 Commission. While we can appreciate the need to assure that the Transaction does not
21 reduce service quality, perpetuating a more expensive and burdensome level of regulation
22 indefinitely is not conducive to efficient regulation for the long term and cannot be
23 considered to be in the public interest.

1 **Q: So in conclusion, having reviewed each of the Merger Standards, does GPE's**
2 **proposal promote the public interest?**

3 A: Yes, and with the addition of the new merger commitments that the Joint Applicants are
4 offering, as described below, the positive impact this Transaction will have on the public
5 interest is abundantly clear. I urge the Commission to grant its approval for the
6 Transaction, and to permit GPE and Westar to achieve the many benefits of integration
7 that have been described in the application. This Transaction meets all industry standards
8 for being consistent with the public interest, and is fully consistent with the KCC's
9 merger approval guidelines.

10 **IV. PROPOSED MERGER CONDITIONS**

11 **Q: What is the purpose of this section of your testimony?**

12 A: GPE proposes a set of merger conditions that are intended to address the valid concerns
13 that have been raised by Staff and other intervenors. Although we may not agree with all
14 of the issues that have been raised by these parties, we have determined that many can be
15 addressed by offering conditions that would allow the Transaction to go forward while
16 preserving the value for customers, regulators, employees, shareholders, and creditors.
17 The complete list of conditions is presented in Schedule DRI-3.

18 **Q: How did Joint Applicants develop these conditions?**

19 A: As a starting point, we set out to address all of the concerns that we could address in a
20 reasonable manner through one or more conditions. We had a more limited set of
21 conditions in our Direct Testimony. We had been working on an expanded list in
22 anticipation of settlement discussions as merger conditions are commonly developed as
23 an integral part of such discussions. We also negotiated and reached agreement on a

1 number of the conditions with the Missouri Public Service Commission Staff and the
2 Office of Public Counsel in our efforts to obtain a variance from asymmetrical pricing
3 requirements in Missouri's affiliate transaction rules. We also reviewed the conditions
4 that were agreed upon as part of the Algonquin Power & Utilities acquisition of Empire
5 District Electric Company, which was approved by the Commission on December 22,
6 2016 in Docket No. 16-EPDE-410-ACQ ("Empire Merger"). Perhaps most importantly,
7 we considered the list of conditions that were included in the Direct Testimony of
8 Dr. David Dismukes on behalf of KEPCo. These conditions were also reviewed by
9 Mr. Reed to assess whether they were consistent with industry norms.

10 **Q: How do Joint Applicants' proposed conditions compare to the commitments agreed**
11 **to in the Empire Merger as well as elsewhere across the country?**

12 A: As observed by Mr. Reed, our proposal is consistent with and more comprehensive than
13 the set of conditions that became part of the Empire Merger settlement. Mr. Reed, who
14 has been involved in numerous merger transactions across the United States over the past
15 twenty years, also testifies that these proposed ring-fencing measures are consistent with
16 those that have been adopted in other recent utility merger approvals across the U.S.⁶⁴

17 **Q: Did you adopt all of the conditions proposed by Dr. Dismukes?**

18 A: For the most part, although we have edited the specific language either to improve the
19 clarity of the condition, reflect GPE-specific circumstances, and/or to provide greater
20 flexibility to respond to industry developments that may not be foreseeable at this time.
21 With respect to this latter revision, we have added language that allows GPE to propose

⁶⁴ Reed Rebuttal, pp. 11, 97.

adjustments that could not be implemented without Commission approval. In all cases, we do not believe that the proposed edits alter the intent or strength of the condition.

Q: Please summarize the commitments that are being offered by GPE.

A: The commitments may be grouped into the following broad categories:

- General Conditions.
- Financing and Ring-fencing Conditions.
- Ratemaking, Accounting and Related Conditions.
- Affiliate Transactions and Cost Allocations Manual Conditions.
- Quality of Service Conditions.
- Access to Records.
- Parent Company Conditions.

Q: Please describe these Commitments.

A: I will provide a high level overview of the commitments with a cite to where each is located within Schedule DRI-3, and I will explain the relevance of each condition.

As an initial matter, it is important to note that the conditions are being offered by Joint Applicants as a package. If the Commission adopts them in their entirety, Joint Applicants are representing that the Transaction can move forward under these conditions. If any of the conditions are modified it could impact the proposal overall, necessitating additional changes in other elements conditions.

Second, the conditions are intended to operate in perpetuity unless stated otherwise. Unless otherwise stated, before a condition could terminate in the future, the Joint Applicants would have to obtain KCC approval.

1 (a) General Conditions:

2 In this section, Joint Applicants confirm their commitments regarding the location of
3 corporate headquarters (No. 1), membership on the Board of Directors (No. 2), local
4 charity giving and community involvement (No. 3), and the maintenance and promotion
5 of low-income programs (No. 9). In addition, we set out our commitments to honor
6 existing collective bargaining agreements (No. 4), maintain existing compensation levels
7 and benefits for Westar employees (No. 5), endeavor to achieve reductions in head-count
8 through attrition or voluntary programs, and to do it in a balanced manner as between
9 Kansas and Missouri. (Nos. 6-8).

10 **Q: Please explain the importance of these commitments.**

11 A: Both KCP&L and Westar have historically been major participants in local economies as
12 employers and community leaders providing support and resources. Not surprisingly,
13 when the Joint Applicants travelled our territories after announcing the Transaction, a
14 major concern from our customers was about the impact the acquisition would have in
15 their cities and on employees and local labor markets. Witnesses in the case also
16 expressed similar concerns. This commitment ensures stability for our communities for a
17 stated period of time after the Transaction closes and gives our employees important
18 assurances.

19 (b) Financing and Ring-fencing Conditions.

20 **Q: Please provide an overview of the financing and ring-fencing conditions.**

21 A: There are seven areas of ring-fencing commitments contained in the proposal. They
22 establish firm commitments to maintain separate capital structures, debt instruments, and
23 credit ratings among GPE, KCP&L and Westar, to not guarantee the debt of other

1 affiliates or pledge stock of an entity as collateral for obligations of another entity, unless
2 otherwise authorized by the Commission. We state that KCP&L and Westar will
3 maintain investment grade capital structures and commit to stated maximum levels of
4 debt in the capital structure of the utilities and GPE (Nos. 10 and 12). The conditions
5 also contain commitments to continue to conduct business as separate legal entities and to
6 maintain separation of the assets of the affiliated companies unless otherwise authorized
7 by the Commission (No. 11).

8 The Conditions contain commitments that the utilities (KCP&L and Westar) will
9 utilize their respective utility-specific capital structure in future rate case filings, and
10 identifies the evidence the utilities will provide in those future cases to demonstrate the
11 components of their revenue requirements have not been negatively impacted by the
12 Transaction (No. 13). In the unlikely event either KCP&L or Westar experiences a credit
13 rating downgrade to below investment grade level as a result of the Transaction, the
14 conditions set out specific notice and reporting requirements to be given to the
15 Commission and steps to be taken in response to the downgrade, including treatment of
16 the downgrade in future rate cases to ensure that customers are not detrimentally affected
17 (No. 14).

18 Additionally, Joint Applicants commit that they will not seek an increase to their
19 cost of capital as a result of the Transaction or as a result of their ongoing affiliation with
20 GPE or each other. If either utility seeks an increase in its cost of capital, the conditions
21 state how such a request is to be supported in evidence to establish that it is not a result of
22 the Transaction or affiliations with the other entities (No. 15).

1 Finally, the commitments confirm that goodwill (AP) from the Transaction will
2 stay on the books of GPE and will not negatively affect KCP&L's or Westar's cost of
3 capital. Should impairment of the goodwill occur potentially impacting the utilities, rates
4 will be adjusted as needed to remove the impact of the impairment.⁶⁵ For five years post-
5 Transaction, GPE will provide Staff and CURB its annual goodwill impairment analysis
6 to allow them to monitor this issue (No. 16.)

7 **Q: Please explain the importance of these commitments.**

8 A: These commitments, as a group, address concerns raised by Staff and intervenors related
9 to the potential impact of GPE's financial condition on the customers of KCP&L and
10 Westar. They are directly responsive to concerns attributable to the financing of the
11 transaction and the issuance of debt by GPE. These conditions are intended as a group to
12 ring-fence the activities of KCP&L, Westar, and GPE in a manner that protects the
13 customers of the two utility subsidiaries from financial conditions of the parent, GPE.

14 **Q: How will these commitments protect the financial condition of Westar and**
15 **KCP&L?**

16 A. These ring-fencing conditions, considered as a group, ensure that the financial condition
17 of GPE does not have any adverse impact on either KCP&L or Westar and also preserve
18 a separation between KCP&L and Westar for both financial and governance purposes.
19 By doing so, they respond directly to the concerns raised by the parties in this docket.

20 As explained by Mr. Reed in his Rebuttal Testimony, these ring-fencing proposals
21 achieve the purpose of isolating the regulated utilities from financial difficulties at the
22 parent holding company, GPE, or other affiliates and protecting utility customers from

⁶⁵ Unless caused by KCC Order.

1 any adverse financial impacts that may lead to higher rates.⁶⁶ In particular, Mr. Reed
2 notes that the proposed ring-fencing measures are consistent with, or provide greater
3 protection than, those contained in any recent acquisition approved by the Kansas
4 Corporation Commission, and are consistent with – or slightly more protective – than
5 conditions adopted in acquisitions across the country.⁶⁷

6 (c) Ratemaking, Accounting and Related Conditions

7 **Q: Please provide an overview of the ratemaking, accounting and related conditions.**

8 A: There are a set of five Ratemaking and Cost of Service Conditions:

- 9 1) Each utility will file a general rate case in Kansas no later than January 1, 2019
10 (No. 17).
- 11 2) Each utility will use its actual capital structure with a guaranteed equity level that
12 will not go outside of the stated parameters (No. 18).
- 13 3) Transition costs can be deferred on the books of either KCP&L or Westar to be
14 considered for recovery in their future rate cases. The burden of proving such
15 costs are appropriate for inclusion in rates is on the utility (No. 19).
- 16 4) The Joint Applicants will not recover any acquisition premium, transaction costs,
17 including change in control severance costs, or termination fees associated with
18 the transaction (Nos. 20 and 21).⁶⁸
- 19 5) Rates for Westar and KCP&L will each reflect a cost of service that is not
20 adversely impacted by the Transaction and that are commensurate with the

⁶⁶ Reed Rebuttal, p. 98.

⁶⁷ Reed Rebuttal, p. 97.

⁶⁸ This commitment is subject to the exception that such costs can be requested by Joint Applicants in a future rate case should any party propose to impute to KCP&L or Westar the cost or a proportion of the debt GPE is using to finance the Transaction.

1 financial and business risks attendant to their respective regulated utility
2 operations (Nos. 22, 24 and 25), and that rates will not increase as a result of the
3 Transaction (No. 23).

4 **Q: How will these ratemaking commitments protect customers?**

5 A: These ratemaking commitments provide customers with merger-related savings while
6 protecting them from any potential adverse outcome. They also explicitly commit and
7 document that the utility subsidiaries will not recover any acquisition premium,
8 transaction costs, including change in control severance costs, or termination fees
9 associated with the transaction. These conditions address the concerns expressed by
10 witness regarding the impact of the Transaction on future rates. I would also like to point
11 out that this comprehensive package of conditions/protections is substantially similar to
12 what we worked out with the Missouri Public Service Commission Staff and Missouri
13 Office of Public Counsel, and with what we have offered in the FERC proceeding on this
14 Transaction.

15 (d) Affiliate Transactions and Cost Allocations Manual (“CAM”) Conditions.

16 **Q: Please provide an overview of the affiliate transactions and CAM conditions.**

17 A: The Joint Applicants commit to maintain separate book and records (No. 32), provide all
18 affiliate service agreements within 60 days after the close of the Transaction (No. 27),
19 and confirm specific agreements regarding access to books and records of the affiliates
20 and compliance with the KCC’s affiliate transaction rules (Nos. 28-30). Additionally,
21 Joint Applicants commit that they will seek recovery of intercompany charges in their
22 first base rate proceedings post-Transaction at levels equal to the lesser of actual costs or
23 the costs allowed for such function in their most recent rate case prior to the closing of

1 the Transaction (No. 31), and that they will meet with Staff and CURB no later than
2 60 days after the closing of the Transaction to provide information regarding adjustments
3 to KCP&L's and Westar's CAMs (No. 34). The Joint Applicants confirm they will
4 maintain adequate records to support and allow the audit of allocation of centralized
5 corporate costs (No. 35), and GPE agrees to file with the Commission the anticipated
6 MPSC order in the proceeding wherein GPE has sought a variance from the Missouri
7 Affiliate Transaction Rule 4 CSR 240-20.015 (No. 33).

8 **Q: How will these commitments protect customers?**

9 A: These conditions provide assurances that future regulation by the KCC will continue to
10 be effective post-Transaction and customer rates will not increase due to intercompany
11 charges after the Transaction close.

12 (e) Quality of Service Conditions.

13 **Q: Please provide an overview of the quality of service commitments presented by Joint**
14 **Applicants in Schedule DRI-3.**

15 A: KCP&L and Westar agree to provide electric service reliability and call center service
16 that meets or is better than specific performance metric thresholds set forth in the
17 schedules to Mr. Noblet's Rebuttal Testimony. Further, they agree to accept penalties, if
18 deemed necessary by the Commission, for failure to meet those thresholds, as set out in
19 those schedules, and will provide quarterly reports on the relevant metrics (No. 36).

20 **Q: How will these commitments protect customers?**

21 A: A number of witnesses in this case expressed concerns that quality of service might
22 deteriorate post-Transaction due to pressure on the companies to meet the financial
23 obligations resulting from the Transaction. Customers of Westar and KCP&L have

1 consistently enjoyed good quality service from their utility companies and this
2 commitment ensures the companies will have every incentive to continue to perform at,
3 at least, that same level of performance.

4 (f) Access to Records and Parent Company Conditions.

5 **Q: Please provide an overview of these conditions.**

6 A: Joint Applicants confirm that they will provide Staff and CURB with access to written
7 information provided to common stock, bond or bond rating analysts, and will make
8 available to them all books, records and employees to set rates and verify compliance
9 with the companies' CAMs and any conditions ordered by the Commission (Nos. 37 and
10 38). The companies will provide Staff and CURB access to Board of Directors' meeting
11 minutes, subject to appropriate objections on relevancy grounds (No. 39), and they will
12 retain records supporting their affiliate transactions for at least five years (No. 40).

13 Additionally, GPE and Westar commit and reaffirm prior commitments made to
14 the Commission to comply with any previously issued orders applicable to Westar (No.
15 41), and GPE acknowledges the need to meet the capital requirements of its utility
16 subsidiaries (No. 42), and GPE commits to provide to the Staff its integrated resource
17 plan within 30 days of its filing in Missouri (No. 43).

18 **Q: How will these commitments protect customers?**

19 A: These commitments help ensure that the Commission and its Staff have the information
20 needed to perform its future audits, to stay abreast of important occurrences at the
21 utilities, and to protect ratepayers pursuant to the Commission's statutory charge.

1 **V. POST-CLOSING RATE CASES**

2 **Q: It has been suggested⁶⁹ that a general rate case moratorium would be appropriate**
3 **after the Transaction closes. Do you agree?**

4 A: No. We have evaluated whether a rate moratorium is feasible and have concluded that it
5 is not possible to avoid the general rate cases planned to take effect for KCP&L and
6 Westar in 2018.

7 **Q: Why do you say it would not be possible to avoid the 2018 scheduled general rate**
8 **cases?**

9 A: As a result of investments and utility operations already in process and contemplated by
10 the stand alone Westar and KCP&L utilities, both Westar and KCP&L have plans to file
11 general rate cases during 2018 for rates to be effective in late 2018 for KCP&L and in the
12 first half of 2019 for Westar.

13 **Q: What are the drivers requiring the need for the 2018 cases?**

14 A: The need for these cases is for recovery of investments and utility operations already in
15 place at the stand alone utilities that we do not see changing as a result of the Transaction.
16 In the case of KCP&L, we have made substantial investments in our system since the
17 update to our last general rate case filed in 2014, and we need to begin recovering that
18 investment from customers. Additionally, we anticipate placing in service our new
19 customer billing system before the update to the contemplated 2018 case and it is
20 necessary to begin recovering the investment in the new billing system as soon as
21 practicable after it is placed in service. Timing of this billing system recovery is so
22 imperative as computer systems are depreciated on much shorter lives than other types of

⁶⁹ Grady Direct, pp. 95-96.

1 capital investments, so not only would the company not recover return on the investment
2 if a case were delayed, we would also not recover a significant portion of the return *of* the
3 sizeable investment required to implement a new customer billing system.

4 For Westar, there are two significant drivers that require the 2018 case to be filed.
5 First, like KCP&L, Westar has made significant capital investment in its system since the
6 update in its last general rate case in filed in 2014, that it needs to begin recovering from
7 customers. This investment is inclusive of a new wind generation facility Westar placed
8 in service at the end of 2016. Similar to software, a wind generation facility is also a
9 shorter lived asset than traditional baseload generation or distribution system investment,
10 and an extended delay in recovering a return of the wind investment would have
11 significant financial implications on Westar's business. In addition, included in Westar's
12 present base rates is revenue from off-system wholesale power contracts that has reduced
13 the cost of service charged to retail customers. Those contracts are set to expire before
14 the update in the 2018 rate case, and with no options currently available to replace these
15 sales with equivalent revenues, a significant delay in resetting cost of service after
16 expiration of these contracts would create a significant negative revenue impact to
17 Westar's business and to its financial results.

18 Of course, these specific drivers, which are wholly unrelated to the Transaction,
19 are in addition to the generally upwards cost of service trend that has been prevailing in
20 the electric industry across the country for many years now. In light of the nature of the
21 drivers of KCP&L and Westar's 2018 general rate cases, we have concluded that they
22 cannot be avoided.

1 **Q: Will savings and benefits for customers from the Transaction be included in the**
2 **2018 cases?**

3 A: Yes, they most certainly will be. The update of costs for the 2018 cases is expected to be
4 approximately one year after close of the Transaction based upon receiving a KCC Order
5 by April 24, 2017. That means that the efficiencies achieved in roughly the first full year
6 post-close of the Transaction will flow through to customers in the 2018 case. This will
7 result in the rate requests in the 2018 cases for both Westar and KCP&L being lower than
8 they otherwise would be if filed by the stand-alone utilities. The rate requests, due to
9 significance of the investments, will not be eliminated but will be lower.

10 **Q: It has been suggested⁷⁰ that a merger savings rider should be implemented for the**
11 **period after closing through 2020. Do you agree?**

12 A: No. Tracking of merger savings at the level of detail that would be required to
13 implement such a rider is very difficult if not impossible. Moreover, implementing such
14 a proposal would deny GPE the ability to retain any Transaction-related savings which is
15 inconsistent with past Commission orders recognizing that shareholders must have some
16 opportunity to recover costs associated with transactions of this nature.

17 **VI. ENVIRONMENTAL IMPACTS, ECONOMIC WASTE AND USE OF KANSAS**
18 **RESOURCES**

19 **Q: Besides providing a summary of which Joint Applicants' witness testimony**
20 **addresses which Merger Standard, are you also addressing specific Merger**
21 **Standards?**

22 A: Yes. I respond to several of the concerns from Staff and the Intervenors below.

⁷⁰ Chriss Direct, pp. 14-15.

1 **Q: How does your Testimony support the Joint Applicant's position that the proposed**
2 **Transaction meets the KCC's Merger Standards?**

3 A: Staff and intervenor witnesses address concerns that are related to the application of
4 Merger Standards (b) related to the effect of the transaction on the environment, (c) the
5 effect on local economies and labor, (f) whether the transaction maximizes the use of
6 Kansas resources, and (g) whether it will reduce the possibility of economic waste. It
7 also relates to the Rebuttal Testimony of Mr. Kemp, who includes generation in his
8 savings analysis.

9 **KCC Staff**

10 **Q: Staff recommends that if the KCC approves the Transaction, the Commission**
11 **should require GPE to seek KCC approval of all plant closings (Glass Direct, p. 4,**
12 **Ins. 9-10). Do you agree?**

13 A: No.

14 **Q: Please explain.**

15 A: Prior to a decision to close any currently operating Westar, KCP&L or KCP&L Greater
16 Missouri Operations ("GMO") (collectively, the "Companies") generating facilities post-
17 Transaction, the Companies will conduct a thorough evaluation of the long-term retail
18 revenue requirement impacts of such closures through an Integrated Resource Planning
19 ("IRP") process. This IRP process is well-established at KCP&L and GMO and will be
20 extended to the Westar system. It involves a very comprehensive and detailed evaluation
21 and considers many factors such as the impact on future capacity needs, fuel costs,
22 purchased power costs, off-system sales revenues, capital costs, environmental retrofits,
23 environmental regulations compliance, and other factors pertinent to retail revenue

1 requirement impacts. In addition, the Companies will evaluate the transmission impacts
2 of any potential plant closures. The Companies will also notify the Southwest Power
3 Pool (“SPP”) of any planned retirements in order for SPP to study possible transmission
4 system impacts. If a plant is determined to be necessary to maintain transmission system
5 reliability, it will not be retired until mitigation measures are in place.

6 To the extent interested parties question the prudence of any such plant closures,
7 the Companies will be prepared to support these decisions as part of any applicable future
8 rate case proceedings. Consequently, there is no need to seek pre-approval of future plant
9 closures.

10 **Q: Staff has taken the position that one of Westar’s specific plants should not be closed**
11 **(Glass Direct, p. 4, ln. 19). Do you agree?**

12 A: It will be necessary to perform analyses of the combined Companies resource portfolio.
13 This analysis will not be completed until July 2017, assuming that the merger is closed. It
14 will entail a thorough evaluation of the plant through the IRP process to reach a
15 conclusion as to whether or not it would be prudent to close this facility, and if so, when
16 that closure should occur.

17 **Q: Have the Companies determined which plants will be closed and the timing of such**
18 **closures?**

19 A: Based on prior IRP analysis, KCP&L and GMO determined that it was in the best interest
20 of its retail customers to cease burning coal at several of its older, smaller coal units. In
21 January 2015, KCP&L announced that the following units would cease burning coal on
22 or before a date certain:

- 23 ▪ Montrose 1 (by 12/31/2016)

- 1 ▪ Montrose 2 and 3 (by 12/31/2021)
- 2 ▪ Sibley 1 and 2 (by 12/31/2019)
- 3 ▪ Lake Road 4/6 (by 12/31/2016)

4 Montrose 1 formally ceased production in April 2016. Also in 2016, Lake Road 4/6
5 converted from burning coal to burning natural gas. The retirement timing of the
6 remaining units is under review.

7 Post-Transaction, retirement decisions will be consistent with providing reliable,
8 reasonably priced service to customers based on IRP analyses of the combined load and
9 resources of KCP&L, GMO, and Westar.

10 **Q: What is Staff's concern with regard to the Transaction's effect on wholesale**
11 **competition?**

12 A: Staff witness Glass stated: "Staff's lone concern is that a generation plant closing to
13 produce savings might also create transmission congestion which would raise local
14 electricity prices." (Glass Direct, p. 35, lns. 14-16). Staff's concern here appears to be
15 tied to the fact that the SPP does not have the authority in its tariffs to prevent plant
16 retirements and therefore "could not prevent the potential creation of market power by a
17 plant closing." (Glass Direct, p. 34, lns. 15-16).

18 **Q: Should Staff be concerned with the potential creation of market power?**

19 A: No. There are many different situations in which the potential for market power can arise
20 within a Regional Transmission Organization ("RTO"). A specific plant retirement is
21 just one of them. Others include the loss of critical transmission lines. Some situations
22 may be long-term in nature, while others are temporary. To address these concerns there
23 already exists an SPP Market Monitoring Unit with procedures in place that evaluate

1 potential market power conditions and initiate mitigation measures where necessary to
2 prevent the exercise of market power. The Market Monitoring Unit also has the power to
3 initiate investigations that can potentially lead to significant fines. As a result, the KCC
4 does not need to approve plant closures to prevent the exercise of market power. The
5 SPP is the appropriate entity, subject to FERC oversight, to address market power
6 concerns.

7 **Q: Staff questions whether transmission constraints will be created from plant closures**
8 **and states that the Joint Applicants have not completed any analysis that addresses**
9 **transmission reliability (Drabinski Direct, p. 17, lns. 13-15). Are the Joint**
10 **Applicants addressing these issues?**

11 A: Yes. KCP&L has completed an analysis of the impact of potential plant closures on the
12 KCP&L and GMO system. Going forward, the Companies will continue to perform
13 these analyses as part of resource planning studies and resource decisions that are based
14 on these studies. Any transmission system or operational changes necessary to address
15 transmission reliability concerns would be included as part of any plan to retire
16 generating plants. I should note that the retirement of five out of the six KCP&L and
17 GMO generating units that may be closed is already included in SPP's regional
18 transmission planning process. Also, Westar has completed a high level view of potential
19 plant retirement impacts and is planning to study the issues thoroughly in 2017.

1 **Q: Based on data provided by Westar, Staff witness Mr. Drabinski states that he has**
2 **evaluated the fuel adjustment clause impact of potential Westar plant closures and**
3 **that this indicates a “significant cost for replacement energy” (Drabinski Direct,**
4 **p. 17, lns. 11-12). Is this a valid concern?**

5 A: Fuel cost impacts are one of the many factors considered in a plant closure decision. As
6 mentioned earlier in my rebuttal testimony, the Companies will complete a thorough
7 evaluation of potential plant closures that will include factors such as future capacity
8 needs, environmental compliance, etc. prior to closing any plants. The impact on fuel
9 costs and changes in generation dispatch will be included as part of this evaluation.

10 **Q: Staff comments on several other plant closure related issues. What are they?**

11 A: Staff also raises the following issues:

- 12 1) Plant dismantlement treatment and costs (Drabinski Direct, p. 17, lns. 16-19)
- 13 2) Stranded cost treatment (Drabinski Direct, p. 17, lns. 20-22)
- 14 3) Reserve margin impacts (Drabinski Direct, p. 18, lns. 1-6)
- 15 4) Long-term plant operation needs (Drabinski Direct, p. 18, lns. 7-11)
- 16 5) Generating plant capacity value (Drabinski Direct, p. 18, lns. 12-15)

17 **Q: Do these issues need to be addressed as part of any final plant closure evaluations?**

18 A: Yes, they do need to be addressed and are part of the evaluation process. The Joint
19 Applicants are conducting an analysis using the KCP&L IRP methodology to determine
20 what the preferred long-term resource plan should look like for the joint Companies. It is
21 anticipated that this analysis will be completed by July 2017. This analysis will include
22 the issues listed above that were raised by Staff.

1 **Q: Why was this IRP process not completed prior to the Joint Applicants requesting**
2 **Transaction approval?**

3 A: As I mentioned above, this type of analysis is extremely detailed and comprehensive. It
4 is appropriate to perform a full IRP study (rather than a special study) as we are not
5 merely tweaking assumptions or examining an isolated resource decision. Rather, we are
6 looking at the composition of a new integrated portfolio. The benefit of this analysis is
7 that it will allow us to identify efficiencies that are attributable to the composition of the
8 merged companies. However, due to its complexity, the IRP is necessarily a multi-month
9 process that requires detailed input from several experts within the Companies. This
10 includes assumptions such as 20-year retail energy and peak load forecasts for each
11 utility, alternative Demand-Side Management (“DSM”) program costs and retail load
12 impacts for each utility, fuel price forecasts, emission allowance price forecasts, new
13 generation construction cost estimates, future projected environmental regulations and the
14 equipment necessary for compliance, other long-term generating plant capital needs, etc.
15 Production cost models are then constructed to simulate operation of the generating
16 portfolio under a number of scenarios that include changes in fuel prices, environmental
17 restrictions and retail load. Financial models are constructed to project retail revenue
18 requirements over the next 20 years based on these scenarios and many alternative
19 resource plans that include various generating plant retirement options and potential
20 generating portfolio additions. We expect that the first integrated
21 (KCP&L/GMO/Westar) study will take longer than usual as new models will need to be
22 developed and results will require a more rigorous review than in the case of an update to
23 a prior IRP study.

1 **Q: Staff expresses concern that the potential retirements assumed as part of savings**
2 **analysis in this case lack sufficient foundation, making it difficult to evaluate the**
3 **appropriate weight to place on them. (Drabinski Direct, p. 34, lns. 17-19). Do you**
4 **agree?**

5 A: No. KCP&L has a long history of conducting IRP studies that evaluate the appropriate
6 long-term resource plans for retail customers. The retirements assumed as part of the
7 savings analysis are based in part on this extensive experience. Thus, we anticipate that
8 retirement of most, if not all, of the units initially identified for closure are likely to be
9 part of the final preferred plan.

10 **Q: Staff proposes that a number of conditions related to plant closure should be**
11 **adopted if the Transaction is approved. Please comment on these conditions.**

12 A: Our review of Staff testimony identified seven areas of study expressed as “conditions”:
13 **Generating Unit Technical Assessment** (Drabinski Direct, p. 87, starting at ln. 15).
14 Staff recommends that a complete analysis and technical assessment of generating units
15 be completed and provided to Staff six months prior to any unit retirement. Because this
16 will be a component of the Companies’ IRP process and KCP&L typically provides IRP
17 results to Staff, the Joint Applicants do not object to this condition. Note that SPP
18 requires a minimum six month notification prior to any plant retirements as well.

19 **Integrated Resource Plan** (Drabinski Direct, p. 88, lns. 4-14). Staff recommends that an
20 IRP be provided to the KCC Staff at least six months prior to any unit retirement.
21 Because KCP&L typically provides IRP results to Staff, the Joint Applicants do not
22 object to this condition.

1 **Stranded Cost Analysis** (Drabinski Direct, p. 88 lns. 16-21). Staff suggests that it is
2 appropriate that, prior to taking any action that creates significant stranded assets, the
3 Joint Applicants provide their plan for recovery to the Commission. The Companies’
4 IRP will state how it would propose to recover any stranded costs as part of its IRP. As
5 such, the Joint Applicants do not object to a condition that its IRP include the
6 Companies’ proposal for stranded cost treatment.

7 **Impact on Westar Retail Energy Cost Adjustment (“RECA”)** (Drabinski Direct,
8 p. 89, lns. 7-9). Staff suggests that the impact of plant closures on the RECA be tracked,
9 accumulated and presented to the Commission on an annual basis. Plant closure
10 decisions are based on many factors other than just those included in RECA. Plant
11 closures are also based on a 20-year view. Therefore, once the decision to retire a plant
12 has proven to be prudent based on this long-term view, estimating the short-term impact
13 on RECA on an ongoing basis serves no purpose. As such, the Joint Applicants object to
14 this condition.

15 **Staff Reductions and Cost to Achieve** (Drabinski Direct, p. 89, lns. 10-13). Staff
16 suggests that plant closure related full-time equivalent (“FTE”) reductions (by position),
17 FTEs retained elsewhere, and severance costs due to the Transaction be reported on a six-
18 month basis and then annually after three years. Because this information will be tracked
19 by the Joint Applicants during the transition period and may become a consideration in
20 future rate proceedings, there is no need to file this information every six months. As
21 such, the Joint Applicants object to this condition. However, should the Commission
22 decide that reporting staff reductions, FTEs retained elsewhere, and severance costs due

1 to the Transaction should be reported as recommended by Staff, the requirement should
2 sunset four years after the Transaction is completed.

3 **Operating Statistics.** (Drabinski Direct, p. 89, lns. 14-15). Staff suggests that certain
4 operating statistics be reported on an annual basis. These statistics include capacity
5 factor, equivalent forced outage rate, gross and net generation. Because this information
6 is already tracked on an ongoing, monthly basis, is readily available and can be requested
7 informally or during any Commission proceeding, there is no need to establish a process
8 to regularly report this information. As such, the Joint Applicants object to this
9 condition. However, should the Commission decide that reporting operating statistics
10 annually is a necessary part of approving this Transaction, the requirement should sunset
11 four years after the Transaction is completed.

12 **Independent Analysis of Potential Sales and Economic Impact** (Drabinski Direct,
13 p. 89, starting ln. 16). Staff suggests that an analysis of potential energy and capacity
14 sales be conducted prior to any final plant closures. Because this analysis is included as
15 part of the Companies' IRP analysis, the Joint Applicants do not object to providing such
16 analysis. However, the Joint Applicants object to a requirement for an independent
17 analysis. KCP&L already considers potential energy and capacity sales in its IRP
18 analysis and therefore this additional, "independent" analysis is unnecessary.

19 Staff also suggests that an analysis of the economic impact to local communities
20 be performed prior to announcing any plant closures. While the Companies will evaluate
21 the local tax implications of plant closures and will have discussions with any impacted
22 communities, a complete economic impact analysis is not planned. The decision to close

1 plants will be based on the best long-term interests of electric customers, not the impact
2 to an individual community, and as such, the Joint Applicants object to this condition.

3 **CURB**

4 **Q: While expressing an opinion that the Transaction could have a slight positive impact**
5 **on the environment, CURB expresses the opinion that it could “result in a financial**
6 **detriment to ratepayers” (Crane Direct, p. 52, ln. 10) depending on the ratemaking**
7 **treatment for issues such as stranded costs. How would you address this concern?**

8 A: As explained earlier in my rebuttal testimony, the Companies will conduct a thorough
9 IRP analysis which includes evaluating potential plant closure impacts on retail
10 customers. This evaluation will include stranded cost treatment and the impact on overall
11 revenue requirements. By definition, IRP analyses that are performed on an integrated
12 basis should result in a lower cost joint portfolio than the simple combination of
13 KCP&L/GMO and Westar portfolios based on separate IRP studies. In addition, since the
14 primary consideration in selecting a preferred resource plan is to minimize overall
15 revenue requirements over a 20-year period, the final course of action should not result in
16 a financial detriment to customers. For example, if a plant retirement would reduce the
17 long-term overall revenue requirements – even while recognizing the appropriate
18 recovery of unrecovered capital costs – the retirement would likely be in customers’ best
19 interests.

20 **Sierra Club**

21 **Q: Sierra Club recommends that the Commission require the Joint Applicants to**
22 **conduct a detailed analysis of the combined fleet to identify plant retirement**

opportunities prior to the Transaction approval (Chang, p. 34, lns. 5-8). Do you agree?

A: No. As explained earlier in my rebuttal testimony, the Companies are in the process of such an analysis that will be completed by July 2017. There will still be time to review the final results prior to any plant closures.

Wal-Mart

Q: Based on Wal-Mart's review of the Transaction's environmental impact and the use of Kansas energy resources, they recommend that the Commission condition the Transaction approval on KCP&L and Westar convening a stakeholder process within 60 days of the Transaction's closing to develop one or more new renewable energy offerings (Chriss Direct, p. 17, lns. 3-7). Do you agree?

A: No. As discussed in the rebuttal testimony of Company witness Caisley, KCP&L and Westar are undoubtedly committed to Kansas wind generation as evidenced by their substantial wind generation portfolios. There is no need to condition Transaction approval on additional renewable generation development. In addition, as Mr. Chriss recognizes, Westar currently has a wind generation tariff offering and that “the economics of the tariff, due to low fuel costs, are currently not favorable for customer usage,” (Chriss Direct, p. 16, lns. 1-2). A future rate case is the appropriate forum to address this issue.

Sunflower and MKEC

Q: Sunflower Electric Power Corporation (“Sunflower”) and Mid-Kansas Electric Company, LLC (“MKEC”) raise three main concerns with the Transaction (Brungardt Direct, p. 3, Ins. 1-6). What are these concerns?

1 A: Their three main concerns are:

2 1) The Transaction's effect on transmission rates for Sunflower and MKEC;

3 2) The Transaction's effect on the cost of doing business in SPP; and

4 3) The validity and accuracy of the synergy savings calculations.

5 I will address the first two concerns. The third concern is addressed in the rebuttal
6 testimony of Messrs. Steven Busser, William Kemp and Thomas Flaherty.

7 **Q: Sunflower and MKEC claim that the Transaction will devalue their voice regarding**
8 **transmission upgrades and build-out, "including how those costs are allocated**
9 **between zones" (Brungardt Direct, p. 4 lns. 1-2). Is this a valid concern with the**
10 **Transaction?**

11 A: No. Transmission planning for the region occurs at the SPP level and is done on a non-
12 discriminatory basis. In addition, decisions on cost allocation principles are the
13 responsibility of the SPP Regional State Committee ("RSC"). The RSC membership
14 includes representatives from state regulatory bodies including the Commission.
15 Whether stand-alone or merged, Westar and KCP&L do not dictate regional transmission
16 cost allocation.

17 **Q: Sunflower and MKEC express concern that the Joint Applicants "may use their**
18 **strong influence to advocate for the development of additional wind generation**
19 **facilities in Western Kansas" (Brungardt Direct, p. 4, lns. 11-13) and this will put an**
20 **increased cost burden on them and other western Kansas utilities through increased**
21 **transmission costs. How do you respond?**

22 A: To the extent that the Joint Applicants decide at some point in the future to develop
23 additional wind resources, requests for transmission service would be submitted to SPP

1 just as other entities requesting transmission service from SPP would do. Approval for
2 service would not be dependent on company size or who owns the utility requesting
3 service. The cost allocation for any needed transmission facilities would follow the RSC
4 and Federal Energy Regulatory Commission (“FERC”)-approved methodology. The SPP
5 has a process in place to evaluate whether or not the costs incurred by an entity
6 participating in SPP exceed the overall benefits received. To the extent an entity is found
7 to be incurring an unfair share of the costs, remedies can be sought. As such, a
8 mechanism is in place to address this issue should it arise.

9 **Q: Sunflower and MKEC express concern that following the Transaction, Westar and**
10 **KCP&L may look to retire generation that could have impacts on Sunflower and**
11 **MKEC market energy pricing (Brungardt Direct, p. 8, lines 6-10). Further, they**
12 **state that “Proper mechanisms should be put in place to protect Sunflower and**
13 **Mid-Kansas from any direct or indirect costs associated with the retirement of those**
14 **facilities.” (Brungardt Direct, p. 10, lns. 3-6). Are there mechanisms already in**
15 **place that address this concern?**

16 **A:** Yes. While the retirement of a currently operating generating facility may impact
17 wholesale energy prices, the retirement would only occur if it were in the best interests of
18 the Companies’ customers as demonstrated through the IRP process. Regarding the
19 scenario in which retirements of Westar and/or KCP&L generating facilities create the
20 ability for KCP&L and/or Westar to exercise market power, both FERC and SPP have
21 mechanisms in place to prevent its use. For example, FERC has the authority to prevent
22 KCP&L from selling energy at market-based rates should it find that KCP&L has the
23 ability to exercise market power in the SPP energy markets. In the past, the FERC has

1 imposed that requirement on Westar, and subsequently, when conditions changed,
2 withdrawn that imposition. What these interveners propose would simply duplicate
3 regulatory processes and create potential jurisdictional disputes, with no benefit and the
4 imposition of more costs. In addition, the SPP market monitor reviews the SPP markets
5 on an ongoing basis and has the tools available to impose market power mitigation
6 measures when needed. To the extent additional transmission is needed to support such
7 plant retirements, as described earlier there are mechanisms in place to appropriately
8 allocate transmission costs in the region. Given the current measures that are in place, the
9 Commission does not need to condition the Transaction on any additional mechanisms
10 regarding this issue.

11 **KEPCo**

12 **Q: In commenting on the savings analysis conducted by Mr. Kemp, KEPCo claims that**
13 **KCP&L and Westar have quantified the difference between the joint planning**
14 **reserve requirement of KCP&L and Westar and the sum of their separate planning**
15 **reserve requirements (Kirsch Direct, p. 29, lns. 12-21). Is this correct?**

16 **A:** No, KCP&L and Westar have not quantified this difference. Dr. Kirsch reaches this
17 conclusion from the response to BPU Data Request No. 2-24 which stated that
18 “Combining KCP&L’s and Westar’s annual reserve margin requirements would provide
19 merged-company reserve margin requirements”. This statement is based on the fact that
20 for an indefinite period of time after the Transaction is completed, there will be no
21 change to the SPP reserve margin requirements for Westar or KCP&L unless and until
22 they obtain network transmission service for their combined load. If in the future the
23 Companies were to request and obtain network transmission service based on their

1 combined load, there may be a slight reduction in the combined reserve margin
2 requirement depending on the diversity in the Companies' system loads. This diversity
3 impact has not been quantified.

4 **Q: KEPCo further claims that since Westar and KCP&L will have reserves in excess of**
5 **the SPP requirements for at least 20 years, that even if the joint reserve requirement**
6 **is reduced due to differences in the Companies' hourly load patterns, that "the**
7 **reduction will have no impact on the merged firm's cost of generating reserves for**
8 **at least 20 years" (Kirsch Direct, p. 30, lns. 3-4). Do you agree?**

9 A: No. The reserves in excess of the SPP requirement on which KEPCo bases this claim
10 assumes there are no plant retirements over the 20-year period. Depending on which
11 plants the Companies ultimately retire, the actual reserve margins will likely be reduced
12 within the next 20 years to the point where reduced reserve requirements related to
13 differences in the Companies' hourly load pattern would impact the cost of reserves.

14 **BPU**

15 **Q: BPU claims that Mr. Kemp's analysis of generating plant retirements is**
16 **fundamentally flawed as it "fails to account for the revenues from the sale [of]**
17 **electricity produced by these generating units." (Lesser Direct, p. 58, lns. 13-14).**
18 **Does the fact that the analysis does not include electricity sales revenues from these**
19 **generating units render the analysis fundamentally flawed?**

20 A: No. As explained earlier in my rebuttal testimony, KCP&L has a long history of
21 conducting IRP studies that evaluate the appropriate long-term resource plans for retail
22 customers. The retirements assumed as part of the due diligence process were based on
23 this extensive experience. Prior to any final plant closure decisions, a combined

1 company IRP will be completed that will include revenues created by these potential
2 retirements as well as many other factors. It is expected that most, if not all, of the units
3 initially identified as retirement candidates will be retired as part of the final preferred
4 plan for the joint Companies.

5 VII. FERC REGULATED WHOLESALE AND TRANSMISSION ISSUES

6 **Q: Certain intervenors⁷¹ expressed concerns about the impact of the Transaction on**
7 **wholesale power contracts and transmission service. Should the Commission's give**
8 **consideration to these issues in this proceeding?**

9 A: No, they are not for several reasons. First, Joint Applicants are not seeking to consolidate
10 the KCP&L and Westar (or any other) transmission zones in connection with the
11 Transaction. KCP&L and KCP&L Greater Missouri Operations Company ("GMO"),
12 both GPE subsidiaries, maintain transmission in separate transmission zones within SPP.
13 Notably, GPE has not sought to consolidate those transmission zones during the more
14 than eight years since the transaction that resulted in KCP&L and GMO becoming
15 affiliates. Second, any alteration of existing transmission zones or the creation of a new
16 transmission zone is ultimately subject to review by the Federal Energy Regulatory
17 Commission ("FERC") under its exclusive jurisdiction under section 205 of the Federal
18 Power Act. Neither Westar, GPE nor SPP has made an application to FERC under
19 section 205 of the Federal Power Act to combine the Westar and KCP&L transmission
20 zones to create a single new transmission zone.

⁷¹ Including KEPCo, BPU, and KMEA/KMU/IP&L.

1 **Q: Upon what basis, then, do witnesses, such as Mr. Krajewski with the BPU, present**
2 **this concern before this Commission?**

3 A: Mr. Krajewski recognizes FERC's jurisdiction over transmission, including over
4 transmission rates, but he states this Commission has indicated in filings at FERC that at
5 least one FERC 'hold harmless' proposal by GPE is subject to this Commission's
6 jurisdiction.

7 **Q: Are these assertions valid?**

8 A: No. The pleading Mr. Krajewski points to does not discuss this Commission's
9 jurisdiction relative to the hold harmless protections offered by GPE.

10 **Q: What about the concerns of certain witnesses regarding possible adverse impacts on**
11 **Westar's wholesale rates under its cost-based generation formula rate ("GFR") and**
12 **on Westar's and KCP&L's transmission formula rates ("TFRs"), that may result if**
13 **the Transactions's purchase price causes Westar's (or KCP&L's) credit ratings to**
14 **drop following consummation of the transaction? Do you agree that these concerns**
15 **should be addressed in these proceedings?**

16 A: No, I do not. As Mr. Bryant discusses in his Rebuttal Testimony, the ratings agencies
17 have confirmed that the Transaction should have no impact on Westar's and KCP&L's
18 existing credit ratings. Furthermore, and more importantly, the issue of the impact of any
19 change in credit ratings on the GFR or TFRs is not properly before this Commission.

20 **Q: Why is the issue not properly before this Commission?**

21 A: Westar's cost-based GFR tariff and rate schedules for full requirements electric service
22 are approved by, and subject to, the exclusive jurisdiction of FERC. The TFRs are
23 incorporated into the Open Access Transmission Tariff ("OATT") of the Southwest

1 Power Pool (“SPP”) that is also approved by, and subject to, the exclusive jurisdiction of,
2 FERC. FERC has exclusive jurisdiction to determine the justness and reasonableness of
3 wholesale sales and transmission rates under section 205 of the Federal Power Act. The
4 parties who have raised this issue regarding possible collateral impacts of the Transaction
5 on Westar’s GFR and the TFRs following close of the Transaction are fully aware of
6 FERC’s exclusive jurisdiction over the rates. In fact, in pleadings filed with FERC on
7 September 23, 2016, these parties have raised similar speculative concerns in the FERC
8 proceedings on this Transaction.

9 **Q: Did Joint Applicants address these concerns in the FERC proceedings?**

10 A: Yes, we did. Westar and GPE filed a request under section 203 of the Federal Power Act
11 for authorization of the Transaction. FERC must determine under section 203 of the
12 Federal Power Act whether the proposed transaction is consistent with the public interest.
13 In making this determination FERC considers, among other things, the effect on rates.
14 Specifically, FERC examines the impact of the proposed transaction on transmission
15 rates and cost-based rates for captive wholesale customers. In doing so, FERC will
16 consider hold harmless commitments made by the Joint Applicants to mitigate any
17 potential impact of the Transaction on such rates.

18 In Joint Applicants’ initial application to FERC for authorization for the
19 Transaction (filed July 12, 2016), as strengthened in their answer filed October 11, 2016,
20 responding to protests filed in that proceeding by other parties, Westar and GPE
21 committed to hold transmission and wholesale power and wholesale distribution service
22 customers with cost-based rates harmless from the rate effects of the Transaction. This is
23 consistent with FERC policy. The hold harmless commitments, coupled with the

respective GFR and TFR formula rate protocols, will mitigate any rate effects of the Transaction on GFR and TFR customers. Moreover, Westar and GPE demonstrated in their October 11, 2016 response that the credit ratings concerns are speculative in nature and that the parties expressing such concerns provide no evidence that Westar's or KCP&L's existing credit ratings will be downgraded as a result of the merger or that, even assuming a credit downgrade, such a downgrade would result in higher rates, given that none of the protesting parties suggested (much less demonstrated) that any of the companies involved in the Transaction would be downgraded below investment level.

Q: Has FERC issued an order in the Westar/Great Plains section 203 proceeding?

A: Not as of the date of filing this Rebuttal Testimony.

VIII. SUMMARY AND CONCLUSION

Q: Please summarize for us your Rebuttal Testimony and review what it is the Joint Applicants are requesting the Commission do in this case?

A: My Rebuttal Testimony demonstrates that the Joint Applicants have demonstrated that the Commission's Merger Stands have been met, the Transaction is in the public interest, and that with the merger conditions included in Schedule DRI-3, the Joint Applicants have presented a clear and rationale path for the Commission to approve the Joint Application while addressing the reasonable concerns and interests expressed by the other parties in their testimony. Westar and KCP&L's Kansas customers, and the greater public generally, will not just benefit from the savings achievable from this Transaction but can also reliably expect qualitative, environmental and economic development benefits to be produced by the Transaction.

Therefore, Joint Applicants respectfully request the Commission:

- 1 ▪ Approve the Transaction as set forth in its Joint Application
- 2 ▪ Authorize Westar and GPE to perform in accordance with the terms of the
- 3 Merger Agreement and Transaction-related instruments and agreements, and
- 4 to take any and all actions that may be reasonably necessary and incidental to
- 5 the performance of the Transaction
- 6 ▪ To the extent any waivers of Commission Orders or regulations are necessary
- 7 to allow the Joint Applicants to perform in accordance with the Merger
- 8 Agreement and Transaction-related instruments and agreements, grant such
- 9 waivers
- 10 ▪ Find that the Transaction and other relief sought in this Joint Application
- 11 promotes the public interest, and
- 12 ▪ Grant such other relief as may be necessary and appropriate to accomplish the
- 13 purposes of the Transaction and the Joint Application, and to consummate the
- 14 Transaction-related agreements in accordance with the terms thereof

15 We respectfully request that if the Commission determine that merger conditions are
16 required for the above requested approval that the Commission utilize the merger
17 conditions set forward by Joint Applicants in Schedule DRI-3 to this Rebuttal testimony.
18 These merger conditions represent a comprehensive set of merger commitments that are
19 responsive to the reasonable concerns raised by parties to this proceeding and collectively
20 insure that stakeholders will experience significant benefits from the Transaction. These
21 benefits will come with few and very manageable risks. The merger commitments
22 preserve or expand the Commission's jurisdiction over the Joint Applicants and insure

1 the ability to achieve safe, sufficient and reliable service at just and reasonable rates
2 thereby promoting the public interest.

3 **Q: Does that conclude your Rebuttal Testimony?**

4 A: Yes, it does.

**BEFORE THE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Application of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Westar Energy, Inc. for approval of the Acquisition of Westar Energy, Inc. by Great Plains Energy Incorporated)
)
) Docket No. 16-KCPE-593-ACQ
)
)

AFFIDAVIT OF DARRIN R. IVES

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

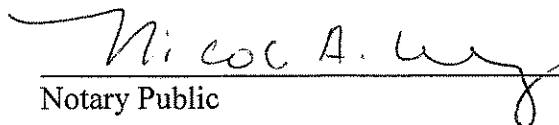
Darrin R. Ives, being first duly sworn on his oath, states:

1. My name is Darrin R. Ives. I work in Kansas City, Missouri, and I am employed by Kansas City Power & Light Company as Vice President – Regulatory Affairs.
2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf of Great Plains Energy Incorporated and Kansas City Power & Light Company consisting of seventy-three (73) pages, having been prepared in written form for introduction into evidence in the above-captioned docket.
3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.

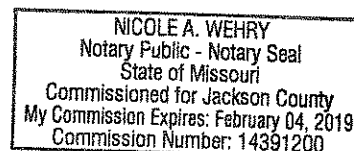


Darrin R. Ives

Subscribed and sworn before me this ___ day of January 2017.


Notary Public

My commission expires: Feb. 4 2019



Joint Applicants' Preferred Merger Commitments and Conditions

No.	Joint Applicants' Preferred Merger Commitments and Conditions	Existing, Expanded or New ¹	Responsiveness to Staff/ Intervenor Testimony ²
Applicability of Commitments and Conditions			
These conditions ³ are presented as a package. Changes to any individual condition may require changes to other conditions. The conditions will remain in force and effect for the time period specified in the condition or if no time period is specified in perpetuity and in all cases unless otherwise approved by the KCC.			
General Conditions			
1	<p>GPE intends to maintain its corporate headquarters in Kansas City, Missouri and GPE shall honor all terms and conditions of the existing lease for its headquarters office located at 1200 Main in Kansas City, Missouri, which expires in October 2032.</p> <p>GPE has also committed in the Merger Agreement to maintain the current Westar Topeka downtown headquarters building at 818 South Kansas Avenue in Topeka, Kansas for GPE's Kansas headquarters. GPE shall honor all terms and conditions of the existing lease for the Westar headquarters building, which expires in April 2023.</p>	Expanded	Responsive to testimony of Staff and other intervenors regarding impacts on Kansas, local communities, and local economies, as well as workforce reductions.

¹ This column identifies whether the proffered condition is: **existing** – i.e., was proffered by the Joint Applicants initially in the Joint Application, Exhibit B, and the Direct Testimony of Darrin Ives, pp. 12-13; **expanded** – i.e., a condition initially proffered by the Joint Applicants has been expanded in response to Staff or intervenor concerns; or **new** – i.e., is being proffered by the Joint Applicants for the first time in response to Staff or intervenor concerns.

² This column identifies ways in which the proffered conditions are responsive Staff and intervenor testimonies. This column is meant to be illustrative and not exhaustive. “Responsive” means the condition is intended to respond to the identified topic/category. For cases where the Joint Applicants’ condition reflects a specific condition proposed by an intervenor, greater detail is provided. “No change” indicates that the condition has not been materially revised from what the Joint Applicants initially proffered, recognizing that the initial conditions reflect the Joint Applicants’ effort to proactively address expected concerns.

³ Though the terms “condition” and “commitment” may have slightly different meanings, for the sake of simplicity, this exhibit generally uses the term “condition” to refer to Joint Applicants’ proffered conditions and commitments.

Joint Applicants' Proffered Merger Commitments and Conditions

No.	Joint Applicants' Proffered Merger Commitments and Conditions	Existing, Expanded or New ¹	Responsiveness to Staff/ Intervenor Testimony ²
2	Upon completion of the Transaction, GPE will add one current Westar board member to the board of directors of GPE.	New	Responsive to testimony of Staff and intervenors regarding GPE's Board of Directors.
3	GPE has committed to continue charitable giving and community involvement in the Westar service territory at levels equal to or greater than Westar's 2015 levels for a minimum of five (5) years following Transaction close.	Expanded	Responsive to testimony of Staff and other intervenors regarding impacts on Kansas, local communities, and local economies.
4	Honor all existing collective bargaining agreements.	Existing	No change
5	Maintain existing compensation levels and benefits of Westar employees for two years after the closing of the Transaction.	Existing	No change
6	While Transaction-related efficiencies will result in lower employee headcount for the combined organization in both Kansas and Missouri post-closing compared to the two stand-alone organizations prior to closing, GPE expects to achieve such Transaction-related efficiencies in a generally balanced way across both states. Additionally, GPE shall not effect an involuntary reduction in workforce or involuntary retirement program due to the Transaction which results in a reduction in the Kansas-based workforce of KCP&L and Westar of greater than 20 percent for a period of three years after the date of the closing of the Transaction.	Expanded	Responsive to testimony of Staff and other intervenors regarding impacts on Kansas, local communities, and local economies, as well as workforce reductions.
7	Make best efforts to achieve desired staffing reductions through natural attrition.	Existing	No change
8	Consider targeted voluntary staffing reduction programs if natural attrition is not sufficient. Where severance is unavoidable, honor, and in some cases enhance, Westar's employee severance package.	Existing	No change
9	Maintain and promote all low-income assistance programs consistent with those in place at all operating utility companies prior to the	Existing	No change

Joint Applicants' Proffered Merger Commitments and Conditions

No.	Joint Applicants' Proffered Merger Commitments and Conditions	Existing, Expanded or New ¹	Responsiveness to Staff/ Intervenor Testimony ²
	Transaction		
Financing and Ring-Fencing Conditions			
10	<p><u>Separate capital structures:</u> GPE, KCP&L and Westar shall maintain separate capital structures to finance the activities and operations of each entity unless otherwise authorized by the Commission. Unless the Commission authorizes otherwise, GPE, KCP&L and Westar shall maintain separate Corporate Credit Ratings, and separate debt so that neither GPE, KCP&L nor Westar will be responsible for the debts of each other or their other affiliated companies. GPE, KCP&L and Westar shall also maintain adequate capacity under revolving credit facilities and commercial paper, if any, which capacity may be administered on a combined basis provided that pricing is separated by entity and there are neither cross-default provisions nor provisions under which KCP&L or Westar guarantee the debt obligations of any GPE affiliate. GPE, KCP&L and Westar shall also maintain separate preferred stock, if any.</p> <p>KCP&L and Westar plan to use reasonable and prudent investment grade capital structures. KCP&L and Westar will be provided with appropriate amounts of equity from GPE to maintain such capital structures.</p> <p>GPE shall maintain consolidated debt of no more than 70 percent of total consolidated capitalization. KCP&L's debt shall be maintained at no more than 65 percent. GPE commits that Westar's debt shall also be maintained at no more than 65 percent. GPE commits that Westar and KCP&L will not make any dividend payments to the parent company to</p>	Expanded	<p>This reflects KEPCo witness Dismukes' proposed commitments 1 and 1a.⁴ This also reflects Mr. Dismukes proposed commitment 9, with one modification being that that the Joint Applicants specify debt level at no more than 65 percent for dividend payments to the parent company, rather than Mr. Dismukes' proposal of at least 40 percent equity level.</p> <p>This also reflects BPU witness Lesser's suggested "restrictions" (ii) and (iii)⁵ and KIC witness Gorman's recommended condition related to capital structures, though Mr. Gorman recommends an equity ratio of 50 percent.⁶</p>

⁴ Dismukes Direct Testimony, Exhibit DED-2. All references to Mr. Dismukes apply to this same exhibit.

⁵ Lesser Direct Testimony, p. 114.

⁶ Gorman Direct Testimony, p. 23.

Joint Applicants' Proffered Merger Commitments and Conditions

No.	Joint Applicants' Proffered Merger Commitments and Conditions	Existing, Expanded or New ¹	Responsiveness to Staff/ Intervenor Testimony ²
	the extent that the payment would result in an increase in either utility's debt level above 65 percent of its total capitalization, unless the Commission authorizes otherwise.		
11	<p><u>Separation of assets:</u> GPE commits that KCP&L and Westar will not comingle their assets with the assets of any other person or entity, except as allowed under the Commission's Affiliate Transaction statutes or other Commission order.</p> <p>GPE commits that KCP&L and Westar will conduct business as separate legal entities and shall hold all of their assets in their own legal entity name unless otherwise authorized by Commission order.</p> <p>GPE, KCP&L and Westar affirm that the present legal entity structure that separates their regulated business operations from their unregulated business operations shall be maintained unless express Commission approval is sought to alter any such structure. GPE, KCP&L and Westar further commit that proper accounting procedures will be employed to protect against cross-subsidization of GPE's, KCP&L's and Westar's non-regulated businesses, or GPE's other regulated businesses in Kansas or its regulated businesses in other jurisdictions by Westar's Kansas customers.</p>	Expanded	<p>This reflects Mr. Dismukes' proposed commitments 1a, 2, and 7.</p> <p>This also reflects Mr. Gorman's recommended "ring fencing structure" 3.⁷</p>
12	<p><u>Other Separation:</u> Neither KCP&L nor Westar shall guarantee the debt of the other, or of GPE, or of any of GPE's other affiliates, or otherwise enter into make-well or similar agreements, unless otherwise authorized by the Commission. Neither KCP&L nor Westar shall pledge their respective stock or assets as collateral for obligations of any other entity,</p>	Expanded	<p>This reflects Mr. Dismukes' proposed commitments 3, 3a, 3b, and 4.</p> <p>This also reflects Mr. Gorman's recommended "ring fencing structure" 3.⁸</p>

⁷ Gorman Direct Testimony, p. 25.⁸ Gorman Direct Testimony, p. 25.

Joint Applicants' Proffered Merger Commitments and Conditions

No.	Joint Applicants' Proffered Merger Commitments and Conditions	Existing, Expanded or New ¹	Responsiveness to Staff/ Intervenor Testimony ²
	unless otherwise authorized by the Commission. Neither KCP&L nor Westar will include, in any debt or credit instrument of Westar and KCP&L, any financial covenants or default triggers related to GPE or any of its affiliates.		
13	<u>Use of utility-specific capital structure:</u> KCP&L and Westar intend to utilize their respective utility-specific capital structure in general rate case filings subsequent to the close of the Transaction. In such filings, KCP&L or Westar (as applicable) shall provide (a) evidence demonstrating that the Transaction has not resulted in a downgrade to that utility's Corporate Credit Rating that exists at the time the general rate case is filed compared to the Corporate Credit Rating of that utility that existed as of May 27, 2016, or (b) if such a Corporate Credit Rating downgrade resulting from the Transaction exists at the time the general rate case is filed, evidence demonstrating that Kansas customers are held harmless from any cost increases resulting from such a downgrade, and (c) evidence supporting the reasonableness of using the utility-specific capital structure of KCP&L or Westar in determining a fair and reasonable rate of return for the applicable utility.	Expanded	This reflects Mr. Dismukes' proposed commitments 1b and 6. This also reflect Mr. Gorman's recommended condition 3. related to credit rating. ⁹
14	Credit rating downgrade: In the event KCP&L or Westar should have its respective Standard & Poor's ("S&P") or Moody's Corporate Credit Rating downgraded to below BBB- or Baa3, respectively, as a result of the Transaction, KCP&L and/or Westar (the "Impacted Utility") commits to file: i. Notice with the Commission within five (5) business days of such downgrade;	Expanded	This reflects and adds to Mr. Dismukes' proposed commitment 1c.

⁹ Gorman Direct Testimony, p. 21.

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	<p>ii. A pleading with the Commission within sixty (60) days which shall include the following:</p> <ul style="list-style-type: none"> • Actions the Impacted Utility may take to raise its S&P or Moody's Corporate Credit Rating to BBB- or Baa3, respectively, including the costs and benefits of such actions and any plan the Impacted Utility may have to undertake such actions. If the costs of returning Westar and/or KCP&L to investment grade are above the benefits of such actions, Westar and/or KCP&L shall be required to show and explain why it is not necessary, or cost-effective, to take such actions and how the utility(s) can continue to provide efficient and sufficient service in Kansas under such circumstances; • The change, if any, on the capital costs of the Impacted Utility due to its S&P or Moody's Corporate Credit Rating being below BBB- or Baa3, respectively; and • Documentation detailing how the Impacted Utility will not request from its Kansas customers, directly or indirectly, any higher capital costs incurred due to a downgrade of its S&P or Moody's Corporate Credit Rating below BBB- or Baa3, respectively; <p>iii. File with the Commission, every forty-five (45) days thereafter until the Impacted Utility has regained its S&P or Moody's Corporate Credit Rating of BBB- or Baa3, respectively or above, an updated status report with respect to the items required in paragraph 4(c)(ii) above.</p> <p>iv. If the Commission determines that the decline of the Impacted Utility's S&P or Moody's Corporate Credit Rating to a level below BBB- or Baa3, respectively, has caused its quality of service to decline, then the Impacted Utility shall be required to file a plan with the Commission detailing the steps that will be taken to restore service</p>		

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	<p>quality levels that existed prior to the ratings decline.</p> <p>v. In the event KCP&L's or Westar's affiliation with GPE or any of GPE's affiliates is the reason for KCP&L's or Westar's respective S&P or Moody's Corporate Credit Rating to be downgraded to below BBB- or Baa3, respectively, KCP&L and/or Westar shall pursue additional legal and structural separation, if necessary, from the affiliate(s) causing the downgrade, and the Impacted Utility shall not pay a common dividend without Commission approval or until the Impacted Utility's S&P or Moody's Corporate Credit Rating has been restored to BBB- or Baa3, respectively, or above.</p> <p>vi. If KCP&L's or Westar's respective S&P or Moody's Corporate Credit Rating declines below BBB- or Baa3, respectively, as a result of the Transaction, the Impacted Utility shall file with the Commission a comprehensive risk management plan that assures the Impacted Utility's access to and cost of capital will not be further impaired. The plan shall include a non-consolidation opinion if required by S&P or Moody's.</p>		
15	<p><u>Cost of capital:</u> Neither KCP&L nor Westar shall seek an increase to their cost of capital as a result of the Transaction or KCP&L's and Westar's ongoing affiliation with GPE and its affiliates after the Transaction. Any net increase in the cost of capital that KCP&L or Westar seek shall be supported by documentation that: (a) the increases are a result of factors not associated with the Transaction or the post-Transaction operations of GPE or its non-KCP&L and non-Westar affiliates; (b) the increases are not a result of changes in business, market, economic or other conditions caused by the Transaction or the post-Transaction operations of GPE or its non-KCP&L and non-Westar affiliates; and (c) the increases are not a result of changes in the risk profile of KCP&L or Westar caused by the Transaction or the post-</p>	Expanded	This reflects Mr. Dismukes' proposed commitment 6.

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	Transaction operations of GPE or its non-KCP&L and non-Westar affiliates. The provisions of this section are intended to recognize the Commission's authority to consider, in appropriate proceedings, whether this Transaction or the post-Transaction operations of GPE or its non-KCP&L and non-Westar affiliates have resulted in capital cost increases for KCP&L or Westar. Nothing in this condition shall restrict the Commission from disallowing such capital cost increases from recovery in KCP&L or Westar's rates.		
16	<p><u>Goodwill:</u> The goodwill arising from the Transaction will be maintained on the books of GPE and is therefore not expected to negatively affect KCP&L's or Westar's cost of capital; however, if such goodwill becomes impaired other than as a result of a Commission order and such impairment negatively affects KCP&L's or Westar's cost of capital, all net costs associated with the decline in the Impacted Utility's credit quality specifically attributed to the goodwill impairment, considering all other capital cost effects of the Transaction and the impairment, shall be excluded from the determination of the Impacted Utility's rates.</p> <p>For the first five (5) years after closing of the Transaction, GPE shall provide Staff and CURB its annual goodwill impairment analysis in a format that includes spreadsheets in their original format with formulas and links to other spreadsheets intact and any printed materials within thirty (30) days after the filing of GPE's Form 10 Q for the period in which the analysis is performed, as well as all supporting documentation. Thereafter, this analysis will be made available to Staff and CURB upon request.</p>	Expanded	This provides greater detail regarding the Joint Applicants' commitment not to seek recovery of goodwill, i.e., the acquisition premium, in rates, which is also proposed in Mr. Dismukes' proposed commitment 11.
Ratemaking, Accounting, and Related Conditions			
17	Each utility will file a general rate case in Kansas no later than January 1, 2019.	New	This responds to testimony regarding the timing of rate cases.

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18	For ratemaking purposes, Westar and KCP&L agree to the use of an actual utility-specific capital structure with an equity share of no less than 45 percent and no more than 53 percent; provided, however, that Westar and KCP&L may petition the Commission for relief from this condition for reasons not related to the Transaction and the Commission may grant such relief, to the extent it chooses to do so, based on a finding of good cause.	New	This commitment builds upon Mr. Dismukes' proposed commitment 10, except that Mr. Dismukes proposes an equity share of no less than 40 percent (rather than 45 percent, as the Joint Applicants propose).
19	Transition costs are those costs incurred to integrate Westar under the ownership of GPE and include integration planning and execution, and "costs to achieve." Transition costs include capital and non-capital costs. Non-capital transition costs can be ongoing costs or one-time costs. KCP&L's and Westar's non-capital transition costs, which shall include but not be limited to severance payments made to employees other than those required to be made under change of control agreements, can be deferred on the books of either KCP&L or Westar to be considered for recovery in KCP&L and Westar future rate cases. If subsequent rate recovery is sought, KCP&L and Westar will have the burden of proof to clearly identify where all transaction costs are recorded and of proving that the recoveries of any transition costs are just and reasonable as their incurrence facilitated the ability to provide benefits to its Kansas customers. Such benefits may be the result of avoiding or shifting costs and activities.	Expanded	This provides greater detail regarding the treatment of transition costs, which is addressed in Mr. Dismukes' proposed commitments 14, 14a, 14b. This also reflects Mr. Gorman's recommended condition 4. related to transition costs. ¹⁰
20	Goodwill associated with the premium over book value of the assets paid for the shares of Westar stock (referred to herein as "Acquisition Premium") will be maintained on the books of GPE. The amount of any	Expanded	This provides greater detail regarding the Joint Applicants' commitment not to seek recovery of goodwill, i.e., the acquisition premium, in rates, as

¹⁰ Gorman Direct Testimony, p. 21.

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	Acquisition Premium paid for Westar shall not be included in the revenue requirement of KCP&L or Westar in future Kansas rate cases, unless otherwise ordered by the Commission. Neither KCP&L nor Westar will seek direct or indirect recovery or recognition in retail rates of any Acquisition Premium through revenue requirement in future rate cases; provided, however, that if any party to any KCP&L or Westar general rate case proposes to impute the cost or proportion of the debt GPE is using to finance the Transaction to either KCP&L or Westar for purposes of determining a fair and reasonable return for either utility, then KCP&L and Westar reserve the right to seek, in any such rate case, recovery and recognition in retail rates of the Acquisition Premium.		is proposed in Mr. Dismukes' proposed commitment 11.
21	Transaction costs include, but are not limited to, those costs relating to obtaining regulatory approvals, development of transaction documents, investment banking costs, costs related to raising equity incurred prior to the close of the Transaction, severance payments required to be made by change of control agreements, and communication costs regarding the ownership change with customers and employees. Transaction costs shall be recorded on GPE's books. Neither KCP&L nor Westar will seek either direct or indirect recovery or recognition in retail rates of any Transaction costs through its revenue requirement in future rate cases; provided, however, that if any party to any KCP&L or Westar general rate case proposes to impute the cost or proportion of the debt GPE is using to finance the Transaction to either KCP&L or Westar for purposes of determining a fair and reasonable return for either utility, then KCP&L and Westar reserve the right to seek, in any such rate case, recovery and recognition in retail rates of transaction costs.	Expanded	This provides greater detail regarding the treatment of transaction costs, which is addressed in Mr. Dismukes' proposed commitments 11, 11a, and 11b.

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22	KCP&L's and Westar's fuel and purchased power costs shall not be adversely impacted as a result of the Transaction.	New	This is responsive to testimony of Staff and other intervenors regarding customer rate impacts.
23	GPE commits that retail rates for KCP&L and Westar customers shall not increase as a result of the Transaction.	New	This is responsive to testimony of Staff and other intervenors regarding customer rate impacts.
24	The return on equity capital ("ROE") as reflected in Westar's and KCP&L's rates will not be adversely affected as a result of the Transaction. GPE agrees the ROE shall be determined in future rate cases, consistent with applicable law, regulations and practices of the Commission.	New	This is responsive to testimony of Staff and other intervenors regarding customer rate impacts.
25	Provided the actual utility-specific capital structure is used to set rates for KCP&L and Westar, GPE, KCP&L and Westar commit to uphold the principle that their future costs of service and rates will be set commensurate with the financial and business risks attendant to each affiliate's regulated utility operations and that they will not oppose, in either a regulatory proceeding or by judicial appeal of a Commission decision, the application of this principle.	Expanded	This reflects Mr. Dismukes' proposed commitment 13.
26	GPE commits that in future rate case proceedings, KCP&L and Westar will support their assurances provided in this document with appropriate analysis, testimony, and necessary journal entries fully clarifying and explaining how any such determinations were made.	New	This formalizes GPE's intention with regard to demonstrating compliance with these commitments.
Affiliate Transactions and Cost Allocations Manual (CAM) Conditions			
27	KCP&L and Westar commit that they will file with the Commission within sixty (60) days of closing of the Transaction an executed copy of all additional relevant Affiliate Service Agreements related to the Transaction, pursuant to K.S.A. 66-1402.	New	This addresses testimony of Staff and others regarding affiliates and enabling effective regulation by the KCC.

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28	GPE, KCP&L and Westar each expressly recognize that each represents an "Affiliated Interest" under K.S.A. 66-1401, 66-1402, and 66-1403. These statutes confer certain jurisdiction on the Commission regarding access to books and records, submission of contracts, review of affiliate transactions detail, etc.	New	This addresses testimony of Staff and others regarding affiliates and enabling effective regulation by the KCC.
29	KCP&L and Westar will be operated after close of the Transaction in compliance with the Commission's affiliate transaction rules as set forth in K.S.A. 66-1401, <i>et seq.</i> , and in compliance with the affiliate rules adopted in the Commission's December 3, 2010 Order in Docket No. 06-GIMX-181-GIV ("06-181 Order"), or will obtain any necessary variances from such rules, and the Commission's August 7, 2001 Order in Docket No. 01-KCPE-708-MIS ("01-708 Order").	New	This addresses testimony of Staff and others regarding affiliates and enabling effective regulation by the KCC.
30	GPE and its subsidiaries commit that all information related to an affiliate transaction consistent with the affiliate statutes and the Commission's 06-181 and 01-708 Orders in the possession of GPE will be treated in the same manner as if that information is under the control of either KCP&L or Westar.	New	This addresses testimony of Staff and others regarding affiliates and enabling effective regulation by the KCC.
31	GPE and its subsidiaries shall seek recovery of intercompany charges to their regulated utility affiliates in their first base rate proceedings following the closing of the Transaction at levels equal to the lesser of actual costs or the costs allowed related to such functions in the cost of service of their most recent rate case prior to the closing of the Transaction, as adjusted for inflation measured by the Gross Domestic Product Price Index. Billings for common-use assets shall be permitted consistent with GPE's current practices.	New	This reflects Mr. Dismukes' proposed commitment 15.
32	Joint Applicants shall maintain separate books and records, system of accounts, financial statements and bank accounts for Westar and KCP&L. The records and books of Westar and KCP&L will be maintained under	Expanded	This reflects Mr. Dismukes' proposed commitments 16, 16a, 16b.

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	the FERC Uniform System of Accounts ("USOA") applicable to investor-owned jurisdictional electric utilities, as adopted by the Commission.		
33	The Transaction is the subject of a variance request currently before the Missouri Public Service Commission ("MPSC") and an order is expected from the MPSC no later than April 24, 2017. GPE and KCP&L commit to pursue this variance from the provisions of Missouri Affiliate Transaction Rule 4 CSR 240-20.015 and endeavor to have such variance in place by Transaction close. The variance will provide for goods and services transactions between KCP&L, GMO and Westar to occur at cost except for wholesale power transactions, which will be based on rates approved by the Federal Energy Regulatory Commission ("FERC"). Within thirty (30) days of the issuance of a final MPSC order in that proceeding (Case No. EM-2016-0324), KCP&L and Westar will cause to be filed in this docket a copy of the final order.	New	This addresses testimony of Staff and others regarding affiliates and enabling effective regulation by the KCC.
34	KCP&L and Westar agree to meet with Staff and CURB no later than sixty (60) days after the closing of the Transaction to provide a description of its expected impact on the allocation of costs among GPE's utility and non-utility subsidiaries as well as a description of its expected impact on the cost allocation manuals ("CAMs") of KCP&L and Westar. No later than six (6) months after the closing of the Transaction but no less than two (2) months before the filing of a general rate case for either KCP&L or Westar, whichever occurs first, KCP&L and Westar agree to file updates to their existing CAMs reflecting process and recordkeeping changes necessitated by the Transaction.	Expanded	This reflects and expands upon Mr. Dismukes' proposed commitment 16g.
35	GPE, KCP&L and Westar will maintain adequate records to support, demonstrate the reasonableness of, and enable the audit and examination of all centralized corporate costs that are allocated to or directly charged to KCP&L or Westar. Nothing in this condition shall be deemed a	New	This addresses testimony of Staff and others regarding enabling effective regulation by the KCC.

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	waiver of any rights of GPE, KCP&L or Westar to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.		
Quality of Service Conditions			
36	Commencing with the beginning of the first full calendar year after closing, KCP&L and Westar will provide electric service reliability and call center service that meets or is better than the performance metric thresholds set forth in the schedules KTN-1, KTN-2, KTN-3. ¹¹ If KCP&L or Westar fail to meet a particular performance metric threshold, then penalties will apply in accordance with the these schedules and provisions. ¹² KCP&L and Westar will report quarterly on its performance relative to these service metrics beginning with the first full calendar quarter following Transaction close. If KCP&L or Westar perform without penalties on any metric for three consecutive years, then the reporting and penalty provisions for that metric for that utility will terminate.	Expanded	This reflects several elements of recommendations put forth by Staff witness Gile ¹³ and CURB witness Harden ¹⁴ , with some modifications.
Access to Records			
37	KCP&L and Westar shall provide Staff and CURB with access, upon reasonable written notice during working hours and subject to appropriate confidentiality and discovery procedures, to all written information provided to common stock, bond or bond rating analysts which directly or	New	This addresses testimony of Staff and others regarding enabling effective regulation by the KCC.

¹¹ Noblet Rebuttal Testimony, Schedules KTN-1, KTN-2, KTN-3.

¹² *Ibid.*

¹³ Gile Direct, pp. 10-16.

¹⁴ Harden Direct, pp. 9-10.

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	indirectly pertains to KCP&L or Westar or any affiliate that exercises influence or control over KCP&L, Westar or GPE. Such information includes, but is not limited to, common stock analyst and bond rating analyst reports. For purposes of this condition, "written" information includes, but is not limited to, any written and printed material, audio and video tapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed a waiver of any entity's right to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.		
38	GPE, KCP&L and Westar shall make available to Staff and CURB, upon written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, all books, records and employees as may be reasonably required to verify compliance with KCP&L and Westar's CAM and any conditions ordered by this Commission. GPE, KCP&L and Westar shall also provide Staff and CURB any other such information (including access to employees) relevant to the Commission's ratemaking, financing, safety, quality of service and other regulatory authority over KCP&L or Westar; provided that any entity producing records or personnel shall have the right to object on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates; (a) are not within the possession or control of either KCP&L or Westar or (b) are either not relevant or are not subject to, the Commission's jurisdiction and statutory authority by virtue of, or as a result of, the implementation of the proposed Transaction.	New	This reflects Mr. Dismukes' proposed commitment 16c.

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39	KCP&L and Westar shall provide Staff and CURB access, upon reasonable request, the complete GPE Board of Directors' meeting minutes, including all agendas and related information distributed in advance of the meeting, presentations and handouts, provided that privileged information shall continue to be subject to protection from disclosure and KCP&L and Westar shall continue to have the right to object to the provision of such information on relevancy grounds.	New	This addresses testimony of Staff and others regarding enabling effective regulation by the KCC.
40	KCP&L and Westar will maintain records supporting its affiliated transactions for at least five (5) years. Within six months of the close of the merger, Joint Applicants will provide to the Commission Staff detailed journal entries recorded to reflect the transaction and the provisions of this Agreement. The Joint Applicants shall also provide the final detailed journal entries to be filed with the Commission no later than 13 months after the date of the closing. These entries must show, and shall include but not be limited to, the entries made to record or remove from all utility accounts any acquisition premium costs or transaction costs.	New	This reflects Mr. Dismukes' proposed commitment 16d.
Parent Company Conditions			
41	GPE and Westar commit to reaffirm and honor any prior commitments made by Westar to the Commission to comply with any previously issued Commission orders applicable to Westar or its previous owners except as otherwise provided for herein.	New	This affirms GPE's and Westar's intentions to honor all prior commitments.
42	Parent acknowledges that its utility subsidiaries (existing and proposed) need significant amounts of capital to invest in energy supply and delivery infrastructure (including, but not limited to, renewable energy resources and other environmental sustainability initiatives such as energy efficiency and demand response programs) and acknowledges that meeting these capital requirements of its utility subsidiaries will be	Existing	No change

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	considered a high priority by Parent's board of directors and executive management and that Parent's access to capital post-transaction will permit it and its utility subsidiaries to meet their statutory obligation to provide sufficient and efficient service.		
43	GPE will provide to the KCC Staff its integrated resource plan (IRP) within 30 days of its filing in Missouri.	New	This addresses several of the conditions proposed by Staff witness Drabinski and will ensure the timely provision of information regarding generation plant closure. ¹⁵

¹⁵ Drabinski Direct Testimony pp. 88-91.